

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KATHLEEN M. JUNGCLAUS,

Plaintiff

v.

WAVERLY HEIGHTS, LTD.,

Defendant

:
:
:
:
:
:
:
:

NO. 17-cv-04462-RK

Jury Trial Demanded

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
NO. 17-cv-04462-RK
VOLUME I
KATHLEEN M. JUNGCLAUS, : DEPOSITION UPON

Plaintiff, : ORAL EXAMINATION

- vs - : OF

WAVERLY HEIGHTS, LTD., : THOMAS P. GARVIN
THOMAS P. GARVIN and :
JOHN and JANE DOES :
NUMBERS 1-21, :

Defendants.:

TRANSCRIPT OF DEPOSITION, taken by and
before MICHELLE C. MacARTHUR, Certified Court
Reporter-Notary Public, at the Law Offices of
EASTBURN & GRAY, P.C., 60 East Court Street, P.O.
Box 1389, Doylestown, Pennsylvania, 18901, on
Friday, November 2, 2018, commencing at 12:00 p.m.

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APPEARANCES

LAW OFFICE OF MARK D. SCHWARTZ
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ALSO PRESENT

Kathleen M. Jungclaus
Richard Bauer

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By: Mr. Schwartz 4

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(By agreement of counsel, the
sealing, filing and certification of the
transcript has been waived; and all
objections, except as to the form of the
question, have been reserved until the time
of trial.)

THOMAS P. GARVIN, after having
been duly sworn, was examined and testified
as follows:

BY MR. SCHWARTZ:

- 13 Q. Can you state your full name?
14 A. Thomas Porter Garvin.
15 Q. And what's your birth date?
16 A. August 22nd, 1969.
17 Q. And where do you live?
18 A. I live in Fort Washington.
19 Q. Okay. Have you ever been deposed before?
20 A. I have.
21 Q. How many times?
22 A. Approximately, maybe three.
23 Q. And what kind of cases were they?
24 A. One was an employment discrimination case

1 (Pages 1 to 4)

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1 and one was related to care-related issues when I
 2 worked for a different company. Actually, I think
 3 they were both from that company.
 4 Q. What company was that?
 5 A. HCR ManorCare.
 6 Q. Well, if you've done a deposition before
 7 then you're aware of the procedure, but let me go
 8 through at least a truncated version or you heard
 9 Ms. Deon's introduction to depositions of Mr. and
 10 Mrs. Jungclaus; do you pretty much understand what
 11 the direction was and understand the drill?
 12 A. Yes.
 13 Q. All right. In that case I won't go over
 14 it.
 15 Are you under any medications or, you know,
 16 things that could impair your judgment or impair the
 17 truthfulness of your responses?
 18 A. No. I'm not.
 19 Q. Okay. And who is -- other than your
 20 Counsel -- has been present with you yesterday and
 21 today?
 22 A. Richard Bauer.
 23 Q. And who is that?
 24 A. He's a member of our Board of Trustees.

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1 Q. Okay. How long has he been a member of the
 2 Board?
 3 A. Approximately, eight years.
 4 Q. Okay. And how long have you been at
 5 Waverly?
 6 A. About eight and a half years.
 7 Q. And that has continuously been as CEO?
 8 A. That is correct.
 9 Q. Okay. When you talked about the three
 10 lawsuits that you were involved in --
 11 A. Uh-huh.
 12 Q. -- two of which were at a previous
 13 employer --
 14 A. Uh-huh.
 15 Q. -- were you ever named a defendant in any
 16 of them?
 17 A. No.
 18 Q. Okay. Were you ever personally accused of
 19 any harassment?
 20 A. No.
 21 Q. So there's never been any sexual harassment
 22 or claims of discrimination filed against -- where
 23 you were accused of basically doing the
 24 discrimination or providing the hostile environment?

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1 A. No.
 2 MS. DEON: Objection.
 3 BY MR. SCHWARTZ:
 4 Q. Okay. So describe what your position is
 5 and what your responsibilities are.
 6 A. So I'm the President and CEO of Waverly
 7 Heights. My responsibilities are to oversee the
 8 general operations of the entire community.
 9 Q. And do you have a job description?
 10 A. I do.
 11 Q. If you haven't provided it to us, I'd ask
 12 that you do so.
 13 So does your position -- who picks you?
 14 A. Well, a committee of the Board of Trustees
 15 selects the President, so...
 16 Q. Okay. And what committee was that?
 17 A. I don't know if it had a -- it's a search
 18 committee that they had put together.
 19 Q. Okay. And did they use a headhunter or --
 20 A. Yes. They did.
 21 Q. Okay. Do you remember the name of the
 22 headhunter?
 23 A. It was Third Age.
 24 Q. And where are they?

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1 A. I think they merged with another
 2 organization; Plymouth Meeting, perhaps. I'm not
 3 really sure.
 4 Q. Don't worry about it.
 5 Do you know who was on the committee that
 6 hired you?
 7 A. Yeah. I remember some of the names.
 8 Q. All right. Who was that?
 9 A. So it was Chuck Soltis, it was Sam McKeel,
 10 I believe Scott Jenkins was on it, Ed Mahoney; Anita
 11 Summers was on it, Bernice Hunt was on it, I believe
 12 Malcolm Schoenberg, Steve Kirkpatrick I believe was
 13 on it. That's to the best of my recollection; there
 14 may have been more. It was quite a crew of people.
 15 Q. Would you describe them as sort of the
 16 cream of the Main Line?
 17 MS. DEON: Objection.
 18 THE WITNESS: I don't know what
 19 that means.
 20 BY MR. SCHWARTZ:
 21 Q. Would you describe them as pillars of the
 22 community in the Main Line?
 23 MS. DEON: Objection. You can
 24 answer.

2 (Pages 5 to 8)

1 THE WITNESS: I would describe
2 them as Board members of Waverly Heights
3 and residents of Waverly Heights.
4 BY MR. SCHWARTZ:
5 Q. Are they all residents of Waverly Heights?
6 A. No. They are not.
7 Q. You heard Ray Jungclaus yesterday talk
8 about, you know, sometimes the Board picks the
9 President and sometimes the President picks the
10 Board?
11 A. Uh-huh.
12 Q. Were you in a position to nominate Board
13 members?
14 A. No.
15 Q. No. Did you ever suggest that anybody be
16 on the Board?
17 A. I don't believe that I did; not that I
18 recall.
19 Q. Okay. Scott Jenkins, is he also on the
20 Board of Bryn Mawr Trust?
21 A. I believe that he is. Yes.
22 Q. And Bryn Mawr Trust has a banking facility
23 in Waverly, right?
24 A. They do.

1 Q. Does your position require any training?
2 A. I'm not sure exactly what you mean by
3 require any training.
4 Q. Well, unfortunately your lawyer and I have
5 the awesome responsibility of completing so much
6 continuing legal education every year. Is there
7 anything like that that you have to do?
8 A. Yes. There is. I have to take a -- as a
9 licensed Nursing Home Administrator you have to take
10 48 hours of continuing education every two years.
11 Q. And do you personally do that?
12 A. I do.
13 Q. Okay. And in what setting do you do that;
14 where?
15 A. Primarily conferences; state association
16 conferences and national association conferences.
17 Q. So it's at those conferences like, you
18 know, lawyers can go to Aspen and ski all day with
19 an hour in the morning; is it that kind of
20 conference in some instances? I mean you'll hear
21 there are conferences, in general, where you just
22 basically get a certain amount of continuing legal
23 education; is that correct?
24 A. I mean I don't know about the skiing

1 reference --
2 Q. Right.
3 A. -- but it's a conference; you go to a
4 convention center, you attend sessions, you learn
5 about different things that are happening in the
6 industry with your continuing education --
7 Q. Right.
8 A. -- and you renew your license every two
9 years and that's the process.
10 Q. And then you have fun the rest of the day,
11 right? Yes? No? Sometimes?
12 A. Sometimes you --
13 MS. DEON: Objection.
14 THE WITNESS: -- do.
15 BY MR. SCHWARTZ:
16 Q. Okay. You heard -- I keep calling it
17 SilverSneakers, which is showing my age -- you heard
18 Kathy Jungclaus talk because Silverchair No. 14;
19 what's that?
20 A. Silverchairs are our online training -- it
21 used to be our online training --
22 Q. Right.
23 A. -- it's a different name now, too.
24 Q. Right. Do you have to do that?

1 A. I don't necessarily have to, I do. I did
2 quite a few of them. I did not do all of them, all
3 the way along, but I have done numerous.
4 Q. Okay. Did you ever have a discussion with
5 Kathy or anybody else where you suggested that she
6 handle the class for you and sign in for you?
7 A. Absolutely not.
8 Q. That never happened, right?
9 A. No. It did not.
10 Q. One of these conferences that you went to
11 did you -- would you have occasion to take your wife
12 at anytime on these conferences?
13 A. Yes.
14 Q. And did you have occasion for Waverly to
15 pay for her airfare and other accommodations?
16 A. Yes. That was part of the arrangement upon
17 my being hired at Waverly Heights.
18 Q. So do you have a contract?
19 A. I do not.
20 Q. Okay. But that was -- that's something you
21 specifically bargained for?
22 A. No. They offered it to me when I took the
23 job.
24 Q. What kind of -- from a legal standpoint, if

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1 you know -- what kind of organization is Waverly
 2 Heights, Ltd.?
 3 A. It's a single site not-for-profit
 4 organization.
 5 Q. Right. Do you think it was appropriate
 6 that a not-for-profit organization pay for your wife
 7 to go on trips?
 8 MS. DEON: Objection. You can
 9 answer.
 10 THE WITNESS: My opinion is that
 11 was part of the package that they offered
 12 me.
 13 BY MR. SCHWARTZ:
 14 Q. Was that written down, what the package
 15 was?
 16 A. Yes. It was.
 17 Q. Could you please produce that for us?
 18 A. I'm sure we could.
 19 Q. That would be nice. Thanks.
 20 MS. DEON: For the record, that
 21 will be produced if we have a
 22 confidentiality agreement, which I will
 23 speak with Mr. Schwartz about when we
 24 discuss other scheduling in this matter.

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1 MR. SCHWARTZ: Okay. I may not
 2 have a problem with that.
 3 BY MR. SCHWARTZ:
 4 Q. You were here for these various questions
 5 of Ms. Jungclaus yesterday and today, were you not?
 6 A. I was.
 7 Q. And you saw, you know, a certificate that
 8 you produced in terms of diversity; is that correct,
 9 diversity training?
 10 A. I need to see what you're referring to.
 11 Q. Okay. Do you remember seeing anything with
 12 respect to sexual harassment training, a
 13 certificate?
 14 A. Again, I would need to see what you're
 15 referring to.
 16 Q. Well, let me back up.
 17 A. Sure.
 18 Q. I filed an Amended Complaint in this
 19 matter, right?
 20 A. Uh-huh.
 21 MS. DEON: Is that a yes? You
 22 need to answer.
 23 THE WITNESS: Yes.
 24 MR. SCHWARTZ: You have to say

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1 yes or no.
 2 THE WITNESS: Thank you.
 3 MR. SCHWARTZ: That's all right,
 4 I do the same thing.
 5 BY MR. SCHWARTZ:
 6 Q. And you filed an Answer -- or Waverly
 7 Heights filed an Answer; is that correct?
 8 A. I believe our attorney filed the Answer on
 9 our behalf.
 10 Q. Right. Did you go over that with your
 11 attorney?
 12 A. Yes.
 13 Q. Okay. Have you gone over my Request for
 14 Production of Documents? Have you looked at that
 15 before you answered it?
 16 A. Yes.
 17 Q. And Interrogatories, the same question?
 18 A. Yes.
 19 Q. Okay. Request for Admissions; that, too?
 20 A. Yes.
 21 Q. Okay. Was anybody else working with your
 22 attorney -- I don't want you to tell me what you
 23 told your attorney, but was anyone else working with
 24 your attorney in terms of responding to the various

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1 legal documents or was it just you?
 2 A. There were -- there was at least one other.
 3 Q. Who was that?
 4 A. Our Director of IT, Pannha Prak. He's
 5 Director of Information Technology.
 6 Q. Okay. And his is the unpronounceable name
 7 that's on top of all of the e-mails, correct,
 8 that --
 9 A. That is correct.
 10 Q. Well, let -- it's nice of you to agree with
 11 me before I ask the question, but wait for the
 12 question.
 13 Is his name on top of all of the e-mails
 14 that you produced in terms of some of the request
 15 for documents and stuff? Would that be the person
 16 that would literally pull up the documents that were
 17 requested?
 18 MS. DEON: Objection.
 19 THE WITNESS: I'm not sure about
 20 if his name appears on every e-mail that
 21 was produced to you.
 22 BY MR. SCHWARTZ:
 23 Q. Right.
 24 A. But he would be the person that would have

4 (Pages 13 to 16)

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1 the knowledge on how to pull the requested
2 information.
3 Q. Okay. Let's just go over the exhibits that
4 I have, that we've already looked at. RJ-1, have
5 you seen that document before (indicating)?
6 A. I have.
7 Q. When is the first time you saw that?
8 A. The day I received the anonymous letter.
9 Q. Okay. How did you -- did the anonymous
10 person show you the Tweet or how did you -- how did
11 you get it?
12 A. Which one? Which question would you like
13 me to answer?
14 Q. That's a good point. I'll withdraw the
15 question.
16 How did you get this document, RJ-1?
17 A. I received --
18 MS. DEON: Let me just raise an
19 objection. This actual document, for the
20 record, my office enlarged and created this
21 document, but this verbiage does appear
22 elsewhere.
23 MR. SCHWARTZ: Okay.
24 BY MR. SCHWARTZ:

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1 Q. Where did you learn of the verbiage?
2 A. Through an anonymous letter that I
3 received.
4 Q. Okay. So 2, let's take a look at RJ-2. Is
5 this the anonymous letter that you received
6 (indicating)?
7 A. Yes. It is.
8 Q. Okay. Now, what was your first reaction to
9 getting an anonymous letter? What did you do?
10 A. I immediately went onto the Waverly
11 Heights' Twitter account to see if it was true.
12 Q. If what was true? If the quote on page 2
13 appeared there; is that what you --
14 A. Yeah. If what was said in that -- if the
15 accusations made in that letter were true.
16 Q. Okay. So what did you do; you went on the
17 Waverly Twitter account?
18 A. Correct.
19 Q. And did you find anything there?
20 A. Yes.
21 Q. What did you find?
22 A. I clicked on followers and then pulled up
23 Kathy Jungclaus' Twitter and then found everything
24 that's been produced, and I think that's actually

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1 where -- what is this -- RJ-1 originally came from,
2 the version --
3 Q. I believe you. Yeah. It's the same
4 language. No problem.
5 A. Yeah, but that's the version that was on
6 the Twitter account when I went on.
7 Q. Okay. And that's, basically, the road map
8 for what you were -- that led you to do what you did
9 came from anonymous, right?
10 A. That was the beginning of the situation.
11 Q. Okay. And then what further investigation
12 did you do? What did you do next after you saw it
13 on -- that it was -- you saw it after you went to
14 the Waverly site and then to the follower site, what
15 did you do next?
16 A. I printed a copy of it.
17 Q. And then what?
18 A. And then I called Kathy to come down to my
19 office.
20 Q. Okay. Now, you know who Anita Summers is?
21 A. I do.
22 Q. Who is she?
23 A. She's a resident and she's been on the
24 Board of Trustees.

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1 Q. Okay. Is there a picture of her in some --
2 oh, here we go.
3 MR. SCHWARTZ: This would be TG-1
4 (indicating).
5 (At this time, a document was
6 marked for identification as TG-1.)
7 BY MR. SCHWARTZ:
8 Q. So would it be your testimony that you had
9 some real slackers on that Board?
10 MS. DEON: Objection.
11 MR. SCHWARTZ: You can answer.
12 MS. DEON: Objection.
13 THE WITNESS: Was that snarky
14 or --
15 MS. DEON: Don't answer the
16 question.
17 MR. SCHWARTZ: You're instructing
18 him not to answer?
19 MS. DEON: I'm instructing him
20 not to answer. Move on.
21 MR. SCHWARTZ: Hey, Grace, it's
22 been a long time. The only person that I
23 respect who says that is George Soros, so
24 don't use his language.

5 (Pages 17 to 20)

THOMAS P. GARVIN

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1 BY MR. SCHWARTZ:
 2 Q. So you know Anita Summers, correct?
 3 A. I do know her.
 4 Q. Do you know a guy named Paul Samuelson?
 5 A. I do not; I know it's a relative of hers.
 6 Q. Do you know what the original name of her
 7 husband was?
 8 A. Off the top of my head, I don't. I'm not
 9 100 percent sure.
 10 Q. Do you know who a guy named Larry Summers
 11 is?
 12 A. I know who he is. Yes.
 13 Q. Have you ever met him?
 14 A. Once.
 15 Q. As you sit here today, and given you've
 16 heard about the exchange that went back and forth
 17 with respect to my client and that maintenance
 18 individual, Mr. Billig --
 19 A. Yes.
 20 Q. -- as you sit here under oath, do you
 21 believe that Anita Summers drafted this anonymous
 22 letter? Is she the author of it?
 23 MS. DEON: Objection. Calls for
 24 speculation. You can answer.

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1 THE WITNESS: I do not believe
 2 she did.
 3 BY MR. SCHWARTZ:
 4 Q. Why?
 5 A. Because Anita is a very direct person and
 6 if she has a problem or an issue, make no mistake
 7 about it, she will let you know directly; she
 8 doesn't hide behind an anonymous letter.
 9 Q. Well, you heard what Mr. Billig said; is it
 10 correct to say that based upon the evidence that we
 11 have so far, he thought it was somebody else,
 12 correct?
 13 MS. DEON: Objection. You can
 14 answer.
 15 MR. SCHWARTZ: As you remember.
 16 THE WITNESS: What was the
 17 question again?
 18 BY MR. SCHWARTZ:
 19 Q. You sat here while your Counsel was reading
 20 through or had my client read through the Billig
 21 texts; is that correct?
 22 A. Yes.
 23 Q. And isn't it true that he thinks it was not
 24 Anita Summers but someone else, correct?

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1 A. I don't know what Kevin Billig thinks or
 2 how he thinks or where he's getting his information;
 3 that was the first I've heard of it.
 4 Q. Well, we'll be asking him to testify.
 5 What's your inclination? Do you have any
 6 idea who it is?
 7 A. I have absolutely no idea.
 8 Q. Let's go through these other documents and
 9 then we'll take a break for lunch.
 10 Let me show you RJ-3 (indicating).
 11 MS. DEON: Off the record for a
 12 minute.
 13 (At this time, a discussion was
 14 held off the record.)
 15 BY MR. SCHWARTZ:
 16 Q. Forgetting the handwritten stuff and the
 17 circles and all of that, just the text, have you
 18 ever seen that document before?
 19 A. I believe I have. I think this is the one
 20 that I printed where it's enlarged from, but I can't
 21 be sure.
 22 Q. Okay. But, to the best of your
 23 recollection, is that a document that is the
 24 printout of her account; is that correct?

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1 A. Yes. It is.
 2 Q. It includes that language, correct?
 3 A. Includes what language?
 4 Q. The language that's in RJ-1.
 5 A. Yes. Document RJ-3 does include the
 6 language of RJ-1.
 7 Q. Let's go to RJ-4. RJ-4 is my letter to the
 8 Board of Trustees in care of Ms. Deon. When is the
 9 first time you saw this letter (indicating)?
 10 A. I don't remember the exact date. It's
 11 dated November 8th, so shortly thereafter.
 12 Q. So who did you get it from?
 13 A. From our attorney, Grace Deon.
 14 Q. Who's it directed to?
 15 A. It's directed to the Board of Trustees.
 16 Q. And do you know if it found their way to
 17 the Board of Trustees -- if the letter found its way
 18 to them?
 19 A. It made its way to the Executive Committee
 20 and to any other trustee who was interested in
 21 reading it.
 22 Q. So how did you find out who was interested
 23 in reading it?
 24 A. They could have asked any of the members of

6 (Pages 21 to 24)

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1 the Executive Committee to review it.
 2 Q. So who was on the Executive Committee?
 3 A. I don't know that I recall that, as I sit
 4 here right now.
 5 Q. Can you recall any names of people who were
 6 on the Executive Committee at the time?
 7 A. I'd have to -- I'd have to look that up.
 8 Q. All right. Well, can you do that and
 9 supplement your response at some point, okay, when
 10 we're finished?
 11 Do you remember talking about the letter
 12 with any Board members, specific ones?
 13 A. I do.
 14 Q. Who?
 15 A. The entire Executive Committee.
 16 Q. And those are the ones that you don't
 17 remember?
 18 A. Correct.
 19 Q. Is Scott Jenkins --
 20 A. I'd be guessing right now.
 21 Q. -- is Scott Jenkins on the -- I don't want
 22 you to guess -- is Scott Jenkins on that committee?
 23 A. I don't recall if he was at that time.
 24 Q. Mr. Bauer?

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1 A. I believe he was on the Executive
 2 Committee.
 3 Q. Okay. So you had discussions with Board
 4 members, but you don't remember who right now,
 5 correct?
 6 A. I don't recall who all was on the Executive
 7 Committee.
 8 Q. Okay. What Board members did you talk to
 9 about the letter?
 10 A. I know -- I believe -- so I believe Dick
 11 Bauer, Scott Jenkins -- who else was -- I know Mike
 12 Buckley, and then there were -- you know, there were
 13 multiple others. Gerry Renthal. That's the only
 14 ones that I can remember more solid.
 15 Q. Was there a common reaction? Was there a
 16 common reaction, that you can recall; stuff that
 17 they all shared in terms of a reaction?
 18 A. I don't know that I can say there was a
 19 common reaction.
 20 Q. Can you give me a sampling of some of the
 21 reaction that you got?
 22 A. Well, I think it's -- some of the reaction
 23 is that clearly a lot of this is falsified, made up,
 24 untrue, twisted facts, and it's -- it's very

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1 obvious.
 2 Q. What's obvious?
 3 A. Everything I just said.
 4 Q. All right. On the back of that there's
 5 some police reports or a police blotter and a
 6 printout of Robert Supper's criminal history, right?
 7 A. No. There's not.
 8 Q. Yeah. There is.
 9 A. Do you want to clarify which Robert Supper
 10 you're talking about?
 11 Q. Sure. I was going to get to that as soon
 12 as you got there. Exhibit --
 13 MS. DEON: B.
 14 BY MR. SCHWARTZ:
 15 Q. -- B is a police blotter, correct?
 16 A. It appears as such.
 17 Q. Okay. And the next exhibit what's that,
 18 behind it?
 19 A. Exhibit-C?
 20 Q. Yes. What's that called?
 21 A. Delaware County Court of Common Pleas Court
 22 Summary.
 23 Q. Okay. So when you got the letter from your
 24 Counsel, what did you do next? As soon as you got

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1 the letter, what did you do?
 2 A. I think I immediately shared it with Dick
 3 Bauer.
 4 Q. Okay. And do you recall what his reaction
 5 was?
 6 A. Same as what I had mentioned in the
 7 previous answer.
 8 Q. Terrible falsehoods, right?
 9 A. Yeah.
 10 MS. DEON: Objection to the
 11 categorization.
 12 THE WITNESS: The exaggeration
 13 and twisting of the truth in that letter is
 14 very obvious.
 15 BY MR. SCHWARTZ:
 16 Q. Okay. With respect to the police reports
 17 did you do anything? What did you do with those
 18 reports?
 19 A. Would you like to know what I did with it
 20 when it came in your letter?
 21 Q. Sure.
 22 A. Well, the same thing, I gave the whole
 23 letter to Dick Bauer.
 24 Q. Had you ever seen those police reports

7 (Pages 25 to 28)

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1 beforehand?
 2 A. I -- I have.
 3 Q. How did you see them before my letter?
 4 A. I'm trying to remember how I saw them. It
 5 was -- I believe Kathy produced them for me.
 6 Q. Okay. And did you conduct an investigation
 7 of what happened with Mr. Supper and his son as a
 8 result of getting them from Kathy?
 9 A. I did. Yes.
 10 Q. What kind of investigation? What did you
 11 do?
 12 A. So he actually -- I should back up. He
 13 actually brought it to my attention before Kathy
 14 unearthed it, which would have been, you know, much
 15 later than when it actually occurred.
 16 MS. DEON: Who do you mean by he?
 17 MR. SCHWARTZ: Mr. Supper?
 18 THE WITNESS: Bob -- yeah.
 19 Sorry. Bob Supper, Sr. --
 20 BY MR. SCHWARTZ:
 21 Q. Sr. Right.
 22 A. Yeah.
 23 -- who works for us, brought it to my
 24 attention the day -- you know, the Monday or what

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1 A. No.
 2 Q. Okay. Did he tell you that he was on a
 3 gambling trip with his son in Atlantic City --
 4 A. He told me that his --
 5 Q. -- when the car was taken?
 6 A. -- what he told me was that they were
 7 celebrating his mother's birthday, I believe it was,
 8 in Atlantic City.
 9 Q. Right. And did he tell you he was
 10 gambling?
 11 A. I don't believe he told me specifically
 12 that he was gambling.
 13 Q. Did he tell you he was drinking?
 14 A. I don't believe he told me he was drinking.
 15 Q. Did Waverly put any restrictions on his use
 16 of the car that -- as to whether he could be the
 17 sole driver or that family members or strangers
 18 could use the car?
 19 A. There's no restrictions; family members can
 20 use the car.
 21 Q. It doesn't matter whether they have a
 22 criminal past or anything, right?
 23 A. There's no policy against that.
 24 Q. No policy. Okay.

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1 have you after the incident with his son, because
 2 that's what we're talking about, this is an incident
 3 with his son, when that occurred. So I don't
 4 believe he -- I can't remember if he produced a
 5 report of the incident. I feel like maybe he did,
 6 but I don't recall.
 7 Q. What did he tell you? Can you remember
 8 what he talked to you about?
 9 A. Yeah.
 10 Q. What did he say?
 11 A. That his son took his car in the middle of
 12 the night and got arrested for speeding or reckless
 13 driving and that was then arrested, and the car was,
 14 you know, taken to the -- wherever -- the impound
 15 lot or whatever they do.
 16 Q. Right. Did he ever tell you about the
 17 criminal history of his son?
 18 A. He had -- yeah. Yes. He had made that
 19 known to me.
 20 Q. When did he do that?
 21 A. I believe it was shortly after he was
 22 hired.
 23 Q. Okay. And did you ever think that maybe
 24 this guy shouldn't have a car?

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1 All right. So what discipline did Mr.
 2 Supper get as a result of coming forward with this
 3 information when the car was taken?
 4 A. So the incident with his son that occurred,
 5 you know, I felt put the company at great risk for
 6 liability related issues because, you know, of the
 7 obvious reasons; if, God forbid, his son had injured
 8 somebody or caused an accident, it would have caused
 9 liability on Waverly Heights because we own the --
 10 we own the vehicle --
 11 Q. Right.
 12 A. -- and we maintain the insurance on the
 13 vehicle.
 14 Q. Right.
 15 A. So what I did was made the decision to take
 16 the car away as, you know, a way to address that;
 17 remove that liability concern.
 18 Q. Did Ms. Jungclaus make that suggestion?
 19 A. No.
 20 Q. So she never suggested that he not have a
 21 car?
 22 A. Absolutely not. Never.
 23 Q. Did she ever raise any concerns about him
 24 having a car and other comparable employees, who

8 (Pages 29 to 32)

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1 were female, not having a car; did she ever raise
 2 that issue?
 3 MS. DEON: Objection. You can
 4 answer. What is meant by comparable
 5 females?
 6 THE WITNESS: So rephrase your
 7 question for me.
 8 BY MR. SCHWARTZ:
 9 Q. Did she ever complain to you about
 10 inequality in terms of car availability for Mr.
 11 Supper vis-à-vis someone else?
 12 A. So she took to Meredith Feher, F-E-H-E-R;
 13 she made the issue to Meredith, who she claimed made
 14 an issue of it, and she brought it to me. Cars at
 15 Waverly Heights go to the two positions; my
 16 position, as President and CEO, and the CFO
 17 position. Prior to Bob Supper there was a female
 18 CFO who had been in place for probably 23, 24 years
 19 who maintained a car in the exact same benefit. So
 20 that's a benefit that was with those two positions,
 21 decisions that were made well before I came on the
 22 scene.
 23 Q. And you just continued that policy, right?
 24 A. That was --

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1 Q. Until you took the car away from Mr.
 2 Supper?
 3 MS. DEON: Objection. Let him
 4 finish answering the question. He did not
 5 answer your question.
 6 MR. SCHWARTZ: I didn't finish
 7 the question.
 8 Can you reread the question?
 9 (At this time, the court reporter
 10 read back from the record as was
 11 requested.)
 12 BY MR. SCHWARTZ:
 13 Q. So is it your testimony that who got cars
 14 was a prior decision of the Waverly administration,
 15 correct?
 16 A. What I said was that was what was in place
 17 when I arrived and it hasn't changed since.
 18 Q. Who put that in place?
 19 A. I have no idea.
 20 Q. Could it have been the Board?
 21 A. I would be guessing if I said, but it would
 22 make sense that the Board would make that decision
 23 on, you know, who receives a vehicle.
 24 Q. Is it fair to say that the Board would make

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1 decisions of that nature, correct?
 2 A. Yes.
 3 Q. Okay. So is it Ms. Feher who my client
 4 complained about not deserving a car? You sat here
 5 through her testimony; did my client make that up?
 6 MS. DEON: Objection.
 7 THE WITNESS: What's your
 8 question?
 9 MS. DEON: Objection.
 10 MR. SCHWARTZ: I'll withdraw
 11 the --
 12 MS. DEON: Objection.
 13 MR. SCHWARTZ: I withdrew the
 14 question.
 15 MS. DEON: But it would be much
 16 easier if you ask one question and then you
 17 pause and then you ask another question.
 18 MR. SCHWARTZ: Well, that's
 19 better than asking a bunch of compound
 20 legal questions, but go ahead -- I'll go
 21 ahead, I'll rephrase the question.
 22 BY MR. SCHWARTZ:
 23 Q. You sat through my client's testimony
 24 yesterday, right?

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1 A. Yes. I did.
 2 Q. Do you remember her talking about what she
 3 perceived as discrimination when it came to Ms.
 4 Feher not having a car and Mr. Supper having a car?
 5 Do you remember that?
 6 A. I remember parts of the story she told.
 7 Q. Do you dispute that story?
 8 A. I dispute a lot of what she has to say.
 9 Q. Okay. Well, let's just talk about the car.
 10 What was wrong about what she said?
 11 A. I don't recall.
 12 Q. Okay. Do you recall right now what other
 13 things she said that you dispute, as you sit here
 14 now?
 15 A. No. I don't recall. I'll wait for your
 16 questions.
 17 Q. Okay. So was Mr. Supper ever disciplined
 18 for any reason during his tenure at Waverly?
 19 A. Formally disciplined, no; counseled, just
 20 like others, verbally.
 21 Q. So counseling, you don't consider that
 22 discipline?
 23 A. I consider it a form of discipline.
 24 Q. Okay. So what happened to him after this

9 (Pages 33 to 36)

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<p>1 taking of the Waverly car in terms of discipline?</p> <p>2 A. The taking of the Waverly car is a</p> <p>3 benefit --</p> <p>4 Q. Right.</p> <p>5 A. -- and then we gave him a stipend in lieu</p> <p>6 of that, like I said, to -- because of the liability</p> <p>7 issues that were related to having a physical car</p> <p>8 with Waverly Heights. Bob Supper didn't do anything</p> <p>9 wrong, it was his son.</p> <p>10 Q. Are you sure about that?</p> <p>11 A. Yes. I am sure about that.</p> <p>12 Q. Are you sure that Bob Supper never covered</p> <p>13 for his son with respect to his criminal activity?</p> <p>14 Are you sure about that?</p> <p>15 MS. DEON: Objection.</p> <p>16 THE WITNESS: I'm not sure what</p> <p>17 you're asking. Are you saying that you</p> <p>18 think this is a different Bob Supper?</p> <p>19 BY MR. SCHWARTZ:</p> <p>20 Q. No, No, No, No. I'm not suggesting that</p> <p>21 Bob Supper, Sr. is Bob Supper, Jr.</p> <p>22 A. Oh, okay.</p> <p>23 Q. But what I'm suggesting is, is that -- and</p> <p>24 what I'm asking you about is whether Bob Supper, Sr.</p>	<p>1 professional with your client and I will</p> <p>2 expect the same from you.</p> <p>3 MR. SCHWARTZ: I'm thrilled that</p> <p>4 you are representing your client so</p> <p>5 zealously. Let me withdraw the question</p> <p>6 and rephrase it.</p> <p>7 BY MR. SCHWARTZ:</p> <p>8 Q. When you saw the extent of the rap sheet on</p> <p>9 Mr. Supper, Jr., did you ever have a discussion with</p> <p>10 Mr. Supper, Sr. about asking him what went on?</p> <p>11 A. I think I told you that he came to me and</p> <p>12 informed me of what went on.</p> <p>13 Q. But I'm talking about the broader criminal</p> <p>14 rap sheet; I'm talking about the felonies.</p> <p>15 A. Honestly, what happens with Bob Supper's</p> <p>16 son is between him and his family.</p> <p>17 Q. Is it?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. But you don't have a problem with</p> <p>20 his entrusting your car to that son?</p> <p>21 MS. DEON: Objection.</p> <p>22 THE WITNESS: You were just</p> <p>23 talking about something -- a rap sheet of</p> <p>24 some kind versus the car.</p>
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<p>1 ever covered for Bob Supper, Jr. when it came to his</p> <p>2 criminal past?</p> <p>3 A. I have no idea.</p> <p>4 Q. Did you ever ask?</p> <p>5 MS. DEON: Objection. You can</p> <p>6 answer.</p> <p>7 BY MR. SCHWARTZ:</p> <p>8 Q. Did you ever look at that rap sheet and say</p> <p>9 Bob, what the hell is going on here? Did you ever</p> <p>10 do that?</p> <p>11 MS. DEON: Objection.</p> <p>12 THE WITNESS: I don't use that</p> <p>13 kind of language, but...</p> <p>14 BY MR. SCHWARTZ:</p> <p>15 Q. Oh, you leave that to the Board, right?</p> <p>16 MS. DEON: Objection. Objection.</p> <p>17 Mr. Schwartz --</p> <p>18 MR. SCHWARTZ: Don't lecture me.</p> <p>19 MS. DEON: Mr. Schwartz --</p> <p>20 MR. SCHWARTZ: This is my</p> <p>21 deposition. Don't lecture me.</p> <p>22 MS. DEON: Mr. Schwartz, you're</p> <p>23 not going to treat my client in an</p> <p>24 unprofessional manner. I was very</p>	<p>1 BY MR. SCHWARTZ:</p> <p>2 Q. Well, weren't there criminal charges</p> <p>3 brought with respect to the car when he took it?</p> <p>4 MS. DEON: Objection. You can</p> <p>5 answer.</p> <p>6 BY MR. SCHWARTZ:</p> <p>7 Q. If you know.</p> <p>8 A. It looks like there were criminal charges</p> <p>9 against his son.</p> <p>10 Q. Well, that's what I'm saying.</p> <p>11 A. So what's your question?</p> <p>12 Q. My question is did you ever ask Bob Supper</p> <p>13 why are you allowing your son to use the car?</p> <p>14 A. No, because Bob said that his son took the</p> <p>15 car without his permission.</p> <p>16 Q. And you just believed that?</p> <p>17 MS. DEON: Objection. You can</p> <p>18 answer.</p> <p>19 THE WITNESS: I had no reason not</p> <p>20 to.</p> <p>21 BY MR. SCHWARTZ:</p> <p>22 Q. Did you ever ask Bob, has your son had a</p> <p>23 history of taking the car before without your</p> <p>24 permission; did you ask him that?</p>

10 (Pages 37 to 40)

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1 A. No, I didn't, because I made a decision on
 2 how I was going to handle it, and my job is to
 3 protect the company and that's what I felt I did,
 4 and I felt I made the right decision.
 5 Q. Did you know that Bob Supper's son is a
 6 known drug addict, who had been in numerous -- in
 7 rehab numerous times?
 8 A. Did you know that Bob Supper's son is dead?
 9 Q. I'm sorry to hear that. So are 11 members
 10 of my synagogue, okay?
 11 A. I'm sorry to hear that.
 12 Q. Well, you're the first one that said
 13 that --
 14 MS. DEON: Objection.
 15 BY MR. SCHWARTZ:
 16 Q. -- so I thank you.
 17 MS. DEON: It has nothing to do
 18 with --
 19 MR. SCHWARTZ: Oh, I know, Grace.
 20 BY MR. SCHWARTZ:
 21 Q. No, I didn't know he was dead, but did you
 22 know that he had drug problems?
 23 A. Yes. Bob was open about that.
 24 Q. Okay. And you knew that he had drug

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1 just getting rid of the car and just giving him the
 2 money?
 3 A. What problem are you referring to?
 4 Q. Well, couldn't some smart negligence lawyer
 5 get to you as a defendant for paying for the car?
 6 MS. DEON: Objection.
 7 THE WITNESS: I'm not an
 8 attorney.
 9 MS. DEON: You can answer if you
 10 understand it.
 11 THE WITNESS: Yeah, I'm not an
 12 attorney, so I don't know.
 13 MR. SCHWARTZ: All right. Why
 14 don't we have lunch on that happy note?
 15 (At this time, a luncheon recess
 16 was taken.)
 17 BY MR. SCHWARTZ:
 18 Q. I think when last we spoke we were talking
 19 about Mr. Supper, Sr. Anybody ever complain to you
 20 about his alcohol use?
 21 A. No.
 22 Q. Did you ever make any comments to anyone
 23 about his alcohol use?
 24 A. Not that I recall.

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1 problems at the time he was -- or, you know, he had
 2 had drug problems prior to his misappropriating the
 3 car?
 4 A. I don't remember the time frame, but I knew
 5 probably shortly after Bob was hired that his son
 6 had some issues.
 7 Q. Okay. Were you at all worried that okay, I
 8 took the car away, but I gave him a stipend and the
 9 same stuff could happen?
 10 MS. DEON: Objection.
 11 THE WITNESS: So I think I
 12 answered a couple of times; my primary
 13 concern, in my role, is to protect the
 14 organization from being exposed to
 15 liability, because it was a Waverly Heights
 16 owned vehicle, and if anything happened, if
 17 someone had gotten injured or hurt, my
 18 feeling was that would certainly come back
 19 on the company, and so by giving him a
 20 stipend in lieu of a car you eliminate that
 21 possibility. So I think, again, in my role
 22 I believe it was a wise decision.
 23 BY MR. SCHWARTZ:
 24 Q. Do you think it eliminates the problem by

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1 Q. Do you recall telling Ms. Jungclaus, you
 2 know, don't talk to him until after noon?
 3 A. So that comes from actually Kathy coming
 4 down to the office and she having a conversation
 5 with my assistant, Amy Blessing, with me in
 6 proximity, where it was in jest the two of them
 7 talking about Monday mornings with Bob; so that's
 8 where that's coming from.
 9 Q. But, to your knowledge, was he a drinker
 10 and a partier?
 11 A. I think that Bob Supper had major family
 12 issues, and I think weekends were very difficult for
 13 him, and I think coming in after a weekend was
 14 difficult for him because of the strain on whatever
 15 it was in his personal world that he was dealing
 16 with; it had nothing to do with Waverly Heights.
 17 Q. Okay. Did Scott Jenkins ever mention to
 18 you that he was concerned about his level of
 19 drinking?
 20 A. Scott Jenkins never mentioned that he was
 21 concerned about his level of drinking; Scott had
 22 mentioned that he knew Bob liked to go out at night.
 23 Q. So you never had any concerns that he
 24 couldn't perform his job? Or did you ever have any

11 (Pages 41 to 44)

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1 concerns that Bob Supper, Sr. couldn't perform his
2 job?

3 A. I never had any concerns that Bob Supper,
4 Sr. could not perform his job.

5 MS. DEON: If I may just
6 interject that Mark Eastburn has just
7 entered the room as an observant.

8 MR. SCHWARTZ: Okay.

9 Off the record.

10 (At this time, a discussion was
11 held off the record.)

12 BY MR. SCHWARTZ:

13 Q. So you never had any concerns about his
14 ability to perform his job, correct?

15 MS. DEON: Objection. You can
16 answer.

17 THE WITNESS: I never had any
18 concerns about Bob Supper's ability to
19 perform his job.

20 BY MR. SCHWARTZ:

21 Q. Did you ever receive or hear of complaints
22 about how he treated females?

23 A. I heard concerns about how he treated
24 people in general.

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1 brought him in and said you need to dial it down
2 because, again, you know, with him I think he had
3 some real concerns on outside issues that made
4 him -- he's actually much, much better since the
5 unfortunate passing of his son.

6 Q. Okay. Can you remember the two instances
7 when you told him to dial it back, so to speak?

8 A. I don't remember when they were, but I
9 definitely remember them.

10 Q. Okay.

11 A. I handle people, when I have an issue with
12 somebody that needs to be addressed, like I said
13 earlier, I counsel with them and talk to them about
14 what they could have done differently.

15 Q. You didn't do that with Kathy though, did
16 you?

17 A. Well, I have done it with Kathy. Yes.

18 Q. Okay. Did you do it with her prior to her
19 firing?

20 A. Did I do what with Kathy?

21 Q. Did you do any counseling with her after
22 you received the anonymous letter?

23 A. The counseling that I've -- the verbal
24 counseling that I've done with her and the issues

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1 Q. And what were those?

2 A. Bob tends to get excited and, you know, is
3 just -- when he tries to make his point he just
4 sometimes needs to dial it back down, and he's done
5 it to both men and women, myself included.

6 Q. So he's equal opportunity when it comes to
7 his temper; is that what your testimony would be?

8 MS. DEON: Objection. You can
9 answer.

10 THE WITNESS: Yeah. I disagree
11 that it's temper, it's more style.

12 BY MR. SCHWARTZ:

13 Q. It's style. Okay. Well, how would you
14 describe his style?

15 A. One that he likes to make his point.

16 Q. And that he's, what, overly aggressive?

17 A. I would not use the term aggressive.

18 Q. Is he disdainful of other people?

19 A. No.

20 Q. Is it a style that you would encourage?

21 A. It's not my style; it's his style.

22 Q. Have you ever said to him maybe your style
23 is not appropriate?

24 A. There were, I think, two occasions where I

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1 that I addressed were prior to that.

2 Q. Okay. So there was no counseling after the
3 anonymous letter, correct?

4 A. After the anonymous letter, I think I
5 already told you, I brought Kathy down to the
6 office, gave her a copy of it, told her it was
7 not -- I don't remember the exact words, but not
8 very professional of the Vice President of Human
9 Resources and that she needed to go up and take it
10 down right away, which she did.

11 Q. Did you indicate that she would qualify for
12 progressive discipline?

13 A. No. We didn't have that conversation.

14 Q. And you had already made up your -- you had
15 already consulted the Board about getting rid of her
16 prior to her coming into your office, right?

17 A. No.

18 Q. No?

19 A. (Witness shakes head.)

20 Q. When was the decision made to fire her?

21 A. The day before she was terminated.

22 Q. Okay. But you received the anonymous
23 letter, correct?

24 A. Yes.

12 (Pages 45 to 48)

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1 Q. Then you checked it out, correct? You
 2 found it --
 3 A. Yes.
 4 Q. -- you found it on the web or whatever,
 5 right?
 6 A. Right.
 7 Q. And then you met with her?
 8 A. Correct.
 9 Q. Okay. And then what did you do after you
 10 met with her; who were the next people you consulted
 11 with?
 12 A. In the days that followed, with Grace Deon,
 13 our labor attorney, and Dick Bauer, our Board Chair.
 14 Q. Okay. So let's forget about what you told
 15 Ms. Deon; what did you tell Mr. Bauer?
 16 A. Well, I shared with him the letter, and we
 17 had multiple conversations with our labor attorney
 18 trying to figure out what the best way to handle it
 19 was.
 20 Q. Forgetting the labor attorney, did you have
 21 one-on-one conversations with Mr. Bauer without the
 22 labor attorney?
 23 A. I believe I did.
 24 Q. Okay. And what did you talk about then?

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1 A. The letter and how to proceed in
 2 communicating with -- between Mr. Bauer, myself, and
 3 the labor attorney.
 4 Q. Okay. Well, without communicating to the
 5 labor attorney, did you suggest to Mr. Bauer
 6 progressive discipline?
 7 A. I don't recall exactly what we talked
 8 about, but we worked with our labor attorney on how
 9 to figure out the best way to handle this difficult
 10 situation that we were put in by Mrs. Jungclaus.
 11 Q. Okay. Well, I don't want to get into Ms.
 12 Deon's advice, I just want to know your discussions
 13 that you had with Mr. Bauer aside and separate
 14 from -- or any other Board members -- aside and
 15 separate from anything you had with Ms. Deon. Can
 16 you tell me what those conversations were about?
 17 A. Again, about the content of the letter and
 18 how we were going to handle it.
 19 Q. Okay. And what did Mr. Bauer say to you as
 20 far as how it should be handled?
 21 A. That we should work with our labor attorney
 22 and figure out the next course of action.
 23 Q. And that's all? That's the only discussion
 24 that you had with Mr. Bauer about getting -- you

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1 know, about dealing with Ms. Jungclaus?
 2 A. That's what I recall.
 3 Q. Okay. Did you have any other one-on-one
 4 discussions with any other Board members?
 5 A. Not one-on-one. No.
 6 Q. Okay. Did you have any other -- so if it
 7 wasn't one-on-one, who was in the group, if you
 8 remember, that you would have had discussions with
 9 about well, what do we do with Ms. Jungclaus?
 10 A. So on whatever the day was; Monday, maybe,
 11 the 26th of September, if I have that right, our
 12 attorney and Mr. Bauer and I had discussed what
 13 needed to be done, which was to have a --
 14 MS. DEON: Objection. Just
 15 don't --
 16 MR. SCHWARTZ: Don't answer. I
 17 keep trying to take Ms. Deon out of the
 18 picture and you keep bringing her back in.
 19 BY MR. SCHWARTZ:
 20 Q. What discussions, if any, with Board
 21 members did you have about Ms. Jungclaus that Ms.
 22 Deon was not a part of?
 23 A. So we had a conference call on that Monday
 24 to discuss the letter, the seriousness of the -- you

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1 know, what we were dealing with.
 2 Q. Did anyone offer a supposition as far as
 3 who was the author of the letter?
 4 A. No. They did not.
 5 Q. Okay. Who would have been in the meeting,
 6 the conference call?
 7 A. So I think we provided that to you. It was
 8 the Human Resources Committee, the head of the Risk
 9 Assessment -- or not Risk -- Ethics Committee and --
 10 Q. That's Ms. Samuelson -- I mean Summers.
 11 Her husband changed his name because he didn't get
 12 the Nobel Prize.
 13 MS. DEON: Objection.
 14 BY MR. SCHWARTZ:
 15 Q. So Ms. Summers is somebody that you talked
 16 to?
 17 A. I'm sorry, what was that?
 18 Q. Ms. Summers is somebody that you talked to,
 19 right?
 20 A. I talked to -- she's one of about eight
 21 people that were involved -- approximately, eight
 22 people, so you have that information; are you asking
 23 for that again or...
 24 Q. Okay. No. No. I'm asking -- well, let me

13 (Pages 49 to 52)

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1 back up.
 2 You put together sort of a chronology of
 3 events --
 4 A. Right.
 5 Q. -- that you supplied, right?
 6 A. Correct.
 7 Q. Did you author that yourself?
 8 A. Yeah. They're my notes.
 9 Q. They're your notes. And, typically, do you
 10 do that in personnel situations?
 11 A. When I have something that rises to the
 12 level that I think that I need to, I -- yeah. I do.
 13 Q. Did anyone help you with those notes?
 14 A. No.
 15 Q. When were those notes, you know, produced,
 16 meaning when were they created?
 17 A. Within --
 18 Q. Each day did you put in an entry or each --
 19 A. It depends which notes you're talking
 20 about, but I put those notes in, generally, within
 21 24 hours of an event.
 22 Q. Okay. And Mr. Bauer took similar notes,
 23 correct?
 24 A. He took notes --

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1 Q. Notes.
 2 A. Excuse me?
 3 Q. Go ahead.
 4 A. He -- Mr. Bauer took notes on the
 5 termination meeting.
 6 Q. Okay. I understand.
 7 And did anyone help him with those notes?
 8 Do you know?
 9 A. No. They did not.
 10 Q. Did you and he ever discuss what should be
 11 in your respective notes?
 12 A. We did not.
 13 Q. You did not. Okay. Can you remember the
 14 sum and substance of what the discussions were with
 15 the -- you know, the committee and that group that
 16 we just talked about?
 17 A. We had distributed -- or I had distributed
 18 the letter in advance and had them read it, let them
 19 know that we were having discussions about it, and
 20 that we needed -- that it was a serious -- felt that
 21 it was a serious issue that we needed to convene
 22 a -- you know, a Human Resources Committee meeting
 23 to discuss the outcome.
 24 Q. And did you advocate anything specifically

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1 about what should be done?
 2 A. No. We all went into it to make -- to see
 3 what the right decision would be, and based on the
 4 content of that Tweet, the collective feeling of
 5 that entire group, the unanimous decision was that
 6 it was conduct that was very unbecoming of the Vice
 7 President of Human Resources, very unprofessional,
 8 singling out a -- you know, a class of individuals,
 9 a protected class, doing a poll at work, putting it
 10 out there; the way it came about is exactly the type
 11 of thing that you would be concerned about
 12 happening, and so the -- yeah, and along with input
 13 from where we were from a legal standpoint and the
 14 egregious nature of what we felt we were dealing
 15 with, the unanimous decision -- and I think that's
 16 important -- is, you know, while I realize, you
 17 know, I'm the President and CEO and it's my job to
 18 manage the organization, we had around eight very
 19 highly educated, very intelligent people take a
 20 good, hard look at this and come to a unanimous
 21 conclusion that our decision to terminate her was
 22 the only avenue that we could go. So while it was
 23 not a unilateral decision on my part, I think that's
 24 very important for you to understand, it was a

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1 collective group of very talented and educated
 2 professionals who looked at this objectively.
 3 Q. Did you have any concerns that it was an
 4 anonymous letter?
 5 A. I don't -- anonymous letters are, by their
 6 very nature, anonymous, but the content --
 7 Q. That's true.
 8 A. -- the content of it is what it was really
 9 all about, and it was true; the content was true; so
 10 I don't care who it came from, the fact is I, in my
 11 job, have to deal with that issue. It had nothing
 12 to do with -- you know, it's not a personal thing
 13 between me and anybody else when I have to deal with
 14 it, but I understand my job and my job, as an
 15 employer and as the CEO, is to protect my company
 16 so, no, I didn't have any concerns about an
 17 anonymous letter when the content was accurate.
 18 Q. Ms. Summers is someone who is -- holds
 19 herself out as an ethics expert, right?
 20 A. Correct.
 21 Q. Is it ethical, in your opinion, for
 22 somebody to author an anonymous letter?
 23 A. I don't really know.
 24 Q. Okay.

14 (Pages 53 to 56)

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1 A. If someone has a concern and they want to
 2 put it out there and it's true. It's probably not
 3 the first anonymous letter someone ever received.
 4 Q. Is it the first anonymous letter you ever
 5 received?
 6 A. I really don't remember.
 7 Q. Well, you'd remember, wouldn't you, if you
 8 took personnel action before based on an anonymous
 9 letter, wouldn't you?
 10 A. I have been in the working world for
 11 27 years, approximately; I don't remember every
 12 letter that I ever received and whether it was
 13 signed or not.
 14 Q. Okay. Did you ever investigate -- I mean a
 15 small part of the letter is really the Tweet; did
 16 you ever investigate any of the other statements
 17 that were made in the letter?
 18 A. For instance? Can you clarify?
 19 Q. The rest of the text of the letter. Take a
 20 look at it.
 21 MS. DEON: Where is the letter?
 22 THE WITNESS: Can you show me
 23 what you're referring to?
 24 BY MR. SCHWARTZ:

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1 Q. Yes. Here you go (indicating).
 2 MS. DEON: For the record, RJ-2.
 3 BY MR. SCHWARTZ:
 4 Q. Well, the -- if I may, can you turn to the
 5 second page?
 6 A. Sure.
 7 Q. I don't mean to lean over you, but the
 8 offensive language or the language you thought was
 9 offensive is on -- it's after the first paragraph,
 10 right (indicating)?
 11 A. Well, the language --
 12 Q. Correct?
 13 A. -- you said the language that I felt was
 14 offensive; the language that the entire Human
 15 Resources Committee felt was offensive.
 16 Q. Okay. So you got everybody on the Human
 17 Resources Committee to decide -- you talked to
 18 everybody on the Human Resources Committee, right?
 19 A. Well, I didn't get everybody on the Human
 20 Resources Committee to decide anything. I don't run
 21 the Human Resources Committee.
 22 Q. No, but you said everyone on the Human
 23 Resources Committee. Did everyone on the Human
 24 Resources Committee consider this letter?

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1 A. Did everyone on the Human Resources
 2 Committee consider this letter?
 3 Q. Yes.
 4 A. Yes. They all had a copy of it.
 5 Q. Okay. So there's this language, which you
 6 found in the Tweet (indicating). What about all the
 7 rest of the language, did you investigate it?
 8 MS. DEON: And, for the record,
 9 this language is referring just to the
 10 verbiage of --
 11 MR. SCHWARTZ: Yes.
 12 MS. DEON: -- the Tweet itself?
 13 MR. SCHWARTZ: Yes.
 14 BY MR. SCHWARTZ:
 15 Q. What about the rest of the letter?
 16 A. Yeah. They had the entire letter.
 17 MS. DEON: If you need to look at
 18 the letter and read it; he's asking you
 19 specifically a question about the letter.
 20 Take your time.
 21 BY MR. SCHWARTZ:
 22 Q. Yeah. Did you have any concerns or
 23 investigate anything else that's raised in the
 24 letter?

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1 A. I would say we investigated the entire
 2 content of the letter, to answer your question.
 3 Q. Okay. Did you find anything the matter
 4 with it?
 5 A. I find the whole thing very telling; the
 6 letter speaks for itself.
 7 Q. Okay. So you were very concerned about the
 8 light that this would put Waverly in; is that
 9 correct?
 10 A. No. I was concerned that my Vice President
 11 of Human Resources would make a decision to post
 12 something so easily linked to our -- to the
 13 organization when this -- everything I just
 14 described; calling out a protected class of
 15 employees, polling employees, a political statement
 16 of this nature, and then -- I mean exactly what --
 17 you know, what happened here happened, and the
 18 position that we felt it would put us -- could put
 19 us in for future cases would be very difficult if
 20 this became produced as part of evidence, perhaps,
 21 somewhere down the road in another case, like the
 22 one that your client was accused of in a previous
 23 matter.
 24 Q. What's that? What other previous matter

15 (Pages 57 to 60)

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1 are you talking about?

2 A. The -- I think it was Marlene or -- I

3 forget the name of the staff member.

4 Q. Okay. Well, let's get back to this. You

5 were concerned for the organization, right?

6 A. What I just said is I was concerned that

7 it's my job as the president and CEO of Waverly

8 Heights, that I need to make sure that I manage

9 people and that the people that work for us follow

10 proper business standards and conduct themselves in

11 a professional --

12 Q. We --

13 A. I'm still finishing the question.

14 Q. Okay.

15 A. -- and conduct themselves in a professional

16 manner at all times --

17 Q. Do you think --

18 A. -- and that's my job.

19 Q. -- the Board acted in a professional manner

20 at all times?

21 MS. DEON: Objection. With

22 respect to what?

23 THE WITNESS: With respect --

24 yeah.

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1 BY MR. SCHWARTZ:

2 Q. Anything.

3 A. Can you expand?

4 Q. Did the Board act professionally all the

5 time in terms of your experience with the Board; did

6 they always act in a professional manner --

7 A. The Board of --

8 Q. -- the individual members?

9 A. Is your question the Board or individual

10 members?

11 Q. Individual Board members.

12 A. Who?

13 Q. Mr. Soltis.

14 A. So Mr. Soltis, with the e-mails, I would

15 say no, that that was not always professional.

16 Q. Did you ever say to him hey, tone it back?

17 A. No. I did not.

18 Q. Right. What about Mr. Bauer, did he send

19 you some of the e-mails, too?

20 A. I don't -- I don't recall that. What --

21 Q. Do you recall --

22 THE COURT REPORTER: Hold on.

23 MS. DEON: Excuse me.

24 BY MR. SCHWARTZ:

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1 Q. I thought you were finished. Go ahead.

2 MR. SCHWARTZ: Relax, Grace.

3 BY MR. SCHWARTZ:

4 Q. Go ahead.

5 A. Quite frankly, as it relates to the

6 e-mails; junk e-mails of that nature, that are just

7 loaded with junk that I don't have time to read or

8 care about, whether it's related to a political

9 situation, a -- you know, animals, cats, whatever

10 kind of strange e-mails that people are able to

11 produce and send to me, I have zero time and energy

12 for that; spend no time reading them and delete them

13 right away, so the content of them is not something

14 that -- that I was privy to.

15 Q. Well, you produced to me, did you not, you

16 know, e-mails that spanned a couple years for Mr.

17 Soltis, correct?

18 A. Our Director of IT produced -- yeah,

19 produced the e-mails.

20 Q. Did you review them?

21 A. I reviewed some of them, yes.

22 Q. And is that the first time that you ever

23 saw them?

24 A. I would say that if they -- obviously, some

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1 with my name on it would have come to my inbox, but

2 the content of which I can almost guarantee you I

3 didn't bother with; I have no time for that.

4 Q. But you had time for Ms. Jungclaus', right?

5 MS. DEON: Objection.

6 THE WITNESS: Was hers --

7 BY MR. SCHWARTZ:

8 Q. You took the time --

9 A. -- was --

10 THE COURT REPORTER: Hold on.

11 MS. DEON: Excuse me. Would you

12 like to ask that one person finish?

13 THE COURT REPORTER: Yes, please.

14 BY MR. SCHWARTZ:

15 Q. Is it your position that you didn't have

16 time to read some of the Soltis e-mails or any of

17 them, but you had time to look at Ms. Jungclaus'

18 Tweet?

19 MS. DEON: Objection.

20 THE WITNESS: So I received an

21 anonymous letter that came to me in the

22 mail, and so I read my mail that comes to

23 me in hard copy.

24 BY MR. SCHWARTZ:

16 (Pages 61 to 64)

Appendix 1055

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THOMAS P. GARVIN

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1 Q. Your wife got some of these e-mails, didn't
 2 she, or your mother?
 3 A. No.
 4 Q. Your mother. What's your mother's name?
 5 A. Vail.
 6 Q. Vail. What's her first name?
 7 A. Vail.
 8 Q. Her first name is Vail and the last name is
 9 Garvin?
 10 A. Correct.
 11 Q. Why is she on that list?
 12 MS. DEON: Objection.
 13 BY MR. SCHWARTZ:
 14 Q. If you know.
 15 A. Because they had met each other somewhere
 16 along the line and Mr. Soltis would send e-mails to
 17 like-minded people and they, obviously, had made a
 18 connection at some point on that.
 19 Q. So your mom's a like-minded person?
 20 A. It would appear as such.
 21 Q. Did she ever discuss these e-mails with
 22 you?
 23 A. No.
 24 Q. Do you know whether Mr. Bauer referred any

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1 of these e-mails forward to his wife?
 2 A. I'm not sure about that.
 3 MR. SCHWARTZ: Grace, do you have
 4 something to say?
 5 BY MR. SCHWARTZ:
 6 Q. All right. Do you know whether Ms.
 7 Jungclaus got any of Mr. Soltis' e-mails?
 8 A. I don't know for sure, but I believe that
 9 she may have been on the receiving end of some.
 10 Q. Do you know if any of these e-mails from
 11 Mr. Soltis were circulated amongst the staff?
 12 A. I do not know that.
 13 Q. Is it possible that Ms. Jungclaus looked at
 14 the Soltis e-mails and made a decision that what she
 15 was going to text was much less offensive; is that
 16 possible?
 17 MS. DEON: Objection. Calls for
 18 speculation.
 19 BY MR. SCHWARTZ:
 20 Q. That's all right, you can answer.
 21 A. I'm not her, I don't know.
 22 Q. Is it possible?
 23 MS. DEON: Objection. Same
 24 objection.

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1 THE WITNESS: Again, I do not
 2 know.
 3 BY MR. SCHWARTZ:
 4 Q. Would it be logical for an employee who got
 5 that kind of -- those kinds of Soltis e-mails to
 6 think that they could do the same thing?
 7 MS. DEON: Objection. You can
 8 answer.
 9 THE WITNESS: One's an employee
 10 and one is not, so I think judgment would
 11 be -- especially in the Vice President of
 12 Human Resources' role, better judgment
 13 would be that political activity amongst
 14 employees in the workplace is really not a
 15 good idea.
 16 BY MR. SCHWARTZ:
 17 Q. So then it's your testimony that employees
 18 have -- can have better judgment than the Board
 19 members, that the Board members are held to a lesser
 20 standard?
 21 MS. DEON: Objection.
 22 THE WITNESS: No.
 23 BY MR. SCHWARTZ:
 24 Q. That's not your position?

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1 MS. DEON: Objection.
 2 BY MR. SCHWARTZ:
 3 Q. What's your answer? I mean are Board
 4 members held to a lower standard than employees?
 5 MS. DEON: Same objection. You
 6 can answer.
 7 THE WITNESS: Yeah. Board
 8 members are Board members; employees are
 9 employees. Employees have a -- have to
 10 follow our employment rules; all the
 11 policies and procedures that you've seen
 12 earlier.
 13 BY MR. SCHWARTZ:
 14 Q. Is there a Board handbook?
 15 A. Yes.
 16 Q. And you refuse to produce that to us,
 17 right?
 18 MS. DEON: Objection.
 19 THE WITNESS: On the advice of
 20 Counsel it's not something that is --
 21 MS. DEON: Objection as to advice
 22 of Counsel.
 23 MR. SCHWARTZ: Go ahead.
 24 MS. DEON: He can say as to

17 (Pages 65 to 68)

THOMAS P. GARVIN

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1 advice of Counsel, but then he's ending his
2 answer.
3 MR. SCHWARTZ: Is he? Well,
4 thank you for ending it for him.
5 BY MR. SCHWARTZ:
6 Q. What's the handbook say about behavior of
7 Board members when it comes to political matters or
8 hate?
9 MS. DEON: Objection.
10 BY MR. SCHWARTZ:
11 Q. Does that Board statement say anything?
12 MS. DEON: Objection. He's not
13 going to discuss the content of the Board's
14 manual.
15 MR. SCHWARTZ: Well, I'm going to
16 ask for it again.
17 MS. DEON: If you'd like to ask
18 him whether there is anything in the Board
19 manual related to a Social Media Policy you
20 may do that and he may answer if he knows.
21 MR. SCHWARTZ: That's a good
22 question, but I still want the document,
23 but go ahead.
24 THE WITNESS: So your question

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1 Q. Did she forward it to anybody in using any
2 Waverly hardware or software?
3 A. She had it posted/linked directly to our
4 Waverly Heights' Twitter account under her name and
5 identifying herself as the Vice President of Human
6 Resources.
7 Q. Did you follow all of the events that led
8 up to the Commonwealth Court decision? Did you pay
9 some attention to that --
10 A. Yeah. Of course.
11 Q. -- and the unemployment? You know that
12 that -- the matter of whether it was linked in any
13 way was contested? Did I agree with you that it was
14 linked?
15 A. I don't recall what you agreed to or not.
16 Q. Do you recall what the Commonwealth Court
17 did as far as whether it was linked?
18 MS. DEON: I'm going to object to
19 the fact the opinion of the Commonwealth
20 Court speaks for itself --
21 MR. SCHWARTZ: I want to know --
22 MS. DEON: -- but if you --
23 MR. SCHWARTZ: -- what he knows,
24 if he knows.

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1 is?
2 BY MR. SCHWARTZ:
3 Q. Her question.
4 A. I'll wait to hear it from you.
5 Q. Is there anything in the Board manual that
6 deals with a Social Media Policy?
7 A. I don't believe so.
8 Q. Okay. Do you feel that the Soltis e-mails,
9 if you've reviewed them, are harmful to the
10 reputation of Waverly?
11 A. Like I said, I have not reviewed all the
12 Soltis e-mails.
13 Q. Have you reviewed some of them?
14 A. I've glanced at a few since they were
15 requested in discovery.
16 Q. And it never struck you that it could hurt
17 Waverly's reputation?
18 A. That was his personal e-mail.
19 Q. Personal e-mail, but it was sent to e-mail
20 at Waverly e-mail addresses, correct?
21 A. There were some. Yes.
22 Q. Ms. Jungclaus never sent that Tweet to
23 personal Waverly e-mail addresses, did she?
24 A. Well, I don't think Twitter goes to e-mail.

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1 MS. DEON: Let me finish what I'm
2 saying, Mr. Schwartz.
3 MR. SCHWARTZ: You're just
4 prolonging things, but go ahead.
5 MS. DEON: The Commonwealth Court
6 opinion is a writing that speaks for
7 itself, and he can certainly answer to the
8 extent that he recalls what the opinion
9 stated.
10 MR. SCHWARTZ: That was my
11 question.
12 THE WITNESS: The main thing I
13 remember clearly was that they -- the
14 opinion was that they called into question
15 the credibility of your client in writing
16 in the document that we received. She was
17 caught lying in the middle of a hearing
18 there.
19 BY MR. SCHWARTZ:
20 Q. And that's your understanding of what the
21 court said, that she lied?
22 A. I said that's the part I could remember.
23 Q. That's what you can remember. Do you
24 remember the part that the court reversed what

18 (Pages 69 to 72)

THOMAS P. GARVIN

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1 happened below on the denial of the unemployment
 2 comp?
 3 A. I --
 4 Q. Do you remember that?
 5 MS. DEON: Objection. Let him
 6 answer your question.
 7 THE WITNESS: What's the
 8 question?
 9 BY MR. SCHWARTZ:
 10 Q. Did the Commonwealth Court reinstate her
 11 benefits?
 12 A. They did.
 13 Q. Were you the one that wanted to appeal --
 14 that wanted to appeal her award of benefits?
 15 MS. DEON: Objection.
 16 BY MR. SCHWARTZ:
 17 Q. Did you make that decision?
 18 MS. DEON: Objection.
 19 MR. SCHWARTZ: As to what?
 20 MS. DEON: To the effect of legal
 21 Counsel being involved --
 22 MR. SCHWARTZ: No. No.
 23 MS. DEON: -- in that litigation
 24 and he will not be answering that.

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1 your client.
 2 MR. SCHWARTZ: Then speak to your
 3 client. Do you want to take a few minutes,
 4 Grace?
 5 MS. DEON: Just get on with it.
 6 MR. SCHWARTZ: Can you please
 7 refrain from the faces?
 8 MS. DEON: Mark, this isn't
 9 ordinary, just so you know.
 10 Go ahead.
 11 MRS. JUNGCLAUS: I'm sorry, did
 12 you observe that?
 13 MS. DEON: Don't speak to him.
 14 Let's go.
 15 MR. SCHWARTZ: May the record
 16 reflect that my client complained about
 17 faces being made by this highly compensated
 18 executive.
 19 BY MR. SCHWARTZ:
 20 Q. Okay. Let's look at KJ-4.
 21 A. Which is what?
 22 Q. It says Open Door Policy.
 23 A. I don't think I have that.
 24 Q. All right. Here's KJ-4 (indicating). Do

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1 BY MR. SCHWARTZ:
 2 Q. Did you support that? Did you support that
 3 appeal?
 4 A. I did.
 5 Q. Okay. Thanks.
 6 MRS. JUNGCLAUS: He's making
 7 faces at me.
 8 THE WITNESS: Really?
 9 MR. SCHWARTZ: What's the matter?
 10 MRS. JUNGCLAUS: He's making
 11 faces at me.
 12 MR. SCHWARTZ: Please don't.
 13 Both of you stop.
 14 Grace, restrain your client.
 15 Come on, you try to restrain me. Come on,
 16 Grace.
 17 MRS. JUNGCLAUS: He's making
 18 faces at me across the table.
 19 MR. SCHWARTZ: Okay. Well, the
 20 record will reflect that.
 21 MS. DEON: I don't have time for
 22 such nonsense.
 23 MR. SCHWARTZ: Oh, really?
 24 MRS. JUNGCLAUS: Then speak to

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1 you see that? Do you see KJ-4?
 2 A. I do.
 3 Q. What's the first page?
 4 A. Open Door Policy.
 5 Q. Okay. It says page 23, is that a part of
 6 something?
 7 A. It looks like it's part of our -- it looks
 8 like it's probably part of the handbook.
 9 Q. Okay. And then the second page has your
 10 signature on it, correct, at the bottom?
 11 A. Are you talking about the Nondiscrimination
 12 page?
 13 Q. Yes. The second page.
 14 A. Yes.
 15 Q. And then the third page has your signature
 16 on it, correct?
 17 A. The page that says
 18 Problem-Solving/Grievances?
 19 Q. Yes.
 20 A. Yes.
 21 Q. And then the fourth page says
 22 Problem-Solving/Grievances again and it has your
 23 signature, correct?
 24 A. Yes.

19 (Pages 73 to 76)

Appendix 1058

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THOMAS P. GARVIN

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1 Q. And then the next one is Sexual Harassment
 2 for the subject, correct?
 3 A. Yes.
 4 Q. And your signature is on the bottom of that
 5 page, right?
 6 A. Yes.
 7 Q. And then the next page says, at the top,
 8 Ethical Standards and Corporate Compliance, and
 9 that's page 10 of something; is that the handbook?
 10 A. It appears to be. Yes.
 11 Q. Okay. And then there is page 11 of the
 12 handbook, correct?
 13 A. Yes.
 14 Q. And then there's page 12 of the handbook,
 15 correct?
 16 A. I believe that is all the handbook.
 17 Q. Okay. Now, what's the significance of your
 18 having signed the pages that I referenced?
 19 A. Just approving the policies is why my
 20 signature is there.
 21 Q. What was your role in terms of formulating
 22 these policies in the handbook?
 23 A. As policies are updated they're brought
 24 before our senior management team and then edited.

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1 We look at them over the course of a number of weeks
 2 and then when we make changes -- or when we finalize
 3 them, they go for my signature and then they're
 4 officially inserted into our policy procedure
 5 manuals.
 6 Q. Did you affirmatively make some
 7 recommendations that were yours when it came to
 8 formulating a policy?
 9 A. I'm sure I made recommendations on
 10 policies; I generally do.
 11 Q. Can you recall any of them, any specifics
 12 like gee, I really worked hard on blah?
 13 A. No. It's a group effort really.
 14 Q. Okay. And who's in the group?
 15 A. The senior --
 16 Q. Who was in the group?
 17 A. -- the senior management team.
 18 Q. Okay. And who was that at the time that
 19 this was formulated?
 20 A. It would have been Kathy, Janet Thompson,
 21 Pattie Rodgers, Meredith Feher, Jackie Donnelly; at
 22 the time I think it -- I mean what's the date, '11?
 23 So probably Colin Gallagher. In 2011 I don't know
 24 if Constance Dogan may or may not have been in the

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1 position at that time. Marc Heil, Tom Lynch, Amy
 2 Blessing, and I may be forgetting somebody.
 3 Q. Okay. And that's all with respect to the
 4 formulation of the 2014 handbook, correct?
 5 A. Well, it's related to these policies --
 6 Q. Right.
 7 A. -- because what's in this KJ-2 are not only
 8 portions of the employee handbook but, also,
 9 portions of our policies and procedure manuals.
 10 Q. Right.
 11 A. So, you know, like I said, we review all
 12 policies and procedures together as a team, the
 13 entire senior management team, the people I
 14 listed --
 15 Q. Okay.
 16 A. -- and then that becomes the substance for
 17 the employee handbook in a lot of cases.
 18 Q. Is it the case that the employee handbook
 19 that would control or be pertinent to these
 20 proceedings was the 2014 one?
 21 MS. DEON: Do you mean policies
 22 that were in place or procedures that --
 23 MR. SCHWARTZ: No. The handbook.
 24 THE WITNESS: Say it -- ask your

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1 question.
 2 BY MR. SCHWARTZ:
 3 Q. Is the 2014 handbook the one that applies
 4 to employees? Is that the most current one?
 5 A. Yes.
 6 Q. Okay. Would you agree with me that it's
 7 one thing to have policies and another thing to
 8 enforce them?
 9 A. Well, I would certainly agree that it's one
 10 thing to have policies and it's one thing to enforce
 11 them. Yeah.
 12 Q. Okay. So is it possible that people were
 13 fearful of going through the policies when it came
 14 to reporting on discrimination?
 15 A. People -- define people. Like --
 16 Q. Employees.
 17 A. -- the senior management team?
 18 Q. Employees.
 19 A. So your question is?
 20 Q. Everybody below you.
 21 A. Rephrase your question for me.
 22 Q. Is there any basis to the allegations that
 23 people below you were afraid of bringing
 24 discrimination to your attention?

20 (Pages 77 to 80)

THOMAS P. GARVIN

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1 MS. DEON: Objection. You can
2 answer.
3 THE WITNESS: No. Absolutely
4 not.
5 BY MR. SCHWARTZ:
6 Q. You dispute all of my client's testimony
7 that you sat through with respect to others being
8 afraid for their jobs?
9 A. Yes. I do.
10 Q. Was the guy who washed your car afraid for
11 his job?
12 MS. DEON: Objection. Don't
13 answer that.
14 MR. SCHWARTZ: No, answer it.
15 MS. DEON: Don't answer that.
16 BY MR. SCHWARTZ:
17 Q. Did someone wash your car who was an
18 employee?
19 THE WITNESS: Can I answer that?
20 MS. DEON: You can answer that.
21 THE WITNESS: So --
22 MS. DEON: Just answer did
23 someone who was an employee wash your car?
24 THE WITNESS: Yes. Occasionally.

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1 BY MR. SCHWARTZ:
2 Q. Did you pay them?
3 A. No.
4 Q. Is that part of the job benefits that you
5 told me you would produce that the Board gave you?
6 A. It is.
7 Q. It is. So free car washes are part of it?
8 A. Yes. It is.
9 Q. Okay. Did that employee ever have a -- did
10 he ever complain about washing your car --
11 MS. DEON: Objection.
12 BY MR. SCHWARTZ:
13 Q. -- to you?
14 MS. DEON: Objection. You said
15 he, I don't know if it's a he or a she.
16 BY MR. SCHWARTZ:
17 Q. Was it a he or a she?
18 A. I have no idea.
19 Q. So you don't know; it could have been a
20 transgender person that washed your car, right? You
21 don't know; is that right?
22 A. I don't --
23 MS. DEON: Objection.
24 THE WITNESS: -- I don't know.

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1 BY MR. SCHWARTZ:
2 Q. Okay. You don't know?
3 MS. DEON: Objection. Don't
4 respond to those ridiculous questions.
5 BY MR. SCHWARTZ:
6 Q. So you don't know the sex of the person who
7 washed your car?
8 A. No. I have no reason to.
9 Q. Do you ever take your car to a private car
10 wash where you pay for it?
11 A. Again, part of the benefit of the job is
12 that it's a company car that they take care of, and
13 it's -- the reason they wash it is because they can
14 use it for residents at any given time, and it's a
15 Waverly vehicle; it's been done for 32 years.
16 Q. How often is your car used for residents?
17 A. I'm not sure.
18 Q. Well, it's your car?
19 A. It's the company's car.
20 Q. But don't you use the car?
21 A. I do use --
22 Q. Aren't you the primary user of the car?
23 A. I am.
24 Q. Okay. When is the last time somebody said

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1 hey, we need your car to take Ms. Summers to the
2 doctor? When is the last time that happened?
3 A. Well, let me think. I drove -- I don't
4 recall the exact amount, but I drive --
5 MS. DEON: The question was last
6 time Ms. Summers --
7 THE WITNESS: Oh, Ms. Summers.
8 MS. DEON: -- had to go to a
9 doctor and they used your car; that was the
10 question.
11 THE WITNESS: Oh, okay. Yeah, I
12 don't recall that.
13 BY MR. SCHWARTZ:
14 Q. Don't recall. Do you recall your car ever
15 being used to take residents to the doctor?
16 A. I don't recall.
17 MR. SCHWARTZ: This would be TG-2
18 (indicating).
19 (At this time, a document was
20 marked for identification as TG-2.)
21 BY MR. SCHWARTZ:
22 Q. Can you tell me what this document is?
23 A. It appears to be -- yeah, this is an old
24 Mission Statement and Statement of Purposes.

21 (Pages 81 to 84)

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1 Q. Do you know what Mission Statement would
2 have been in effect during Ms. Jungclaus' final
3 days?
4 A. It would have been the one in our Strategic
5 Plan that was dated 2012 to 2018.
6 Q. Okay. Well, regardless of whether this is
7 the latest one, can we just read certain parts of
8 it?
9 Waverly Heights, Ltd. is a nonprofit
10 corporation established to provide quality life care
11 services to its residents. Is that what it says?
12 A. It is.
13 Q. Its purpose is to serve the physical,
14 emotional, recreational, social, religious and
15 health needs of the Waverly Heights' population in a
16 professional and caring manner. Is that
17 appropriate?
18 A. That's what it says.
19 Q. Right. These services are to be provided
20 efficiently and economically within a financially
21 stable organization. Is that what it says?
22 A. Yes.
23 Q. Do you agree with that Mission Statement?
24 A. I do.

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1 Q. How is it consistent with efficiency and
2 being economical and being a nonprofit for you to be
3 paid for draperies; how is that?
4 MS. DEON: Objection. You can
5 answer if you understand what he's getting
6 at.
7 THE WITNESS: Okay. Well, again,
8 that was part of the offer of me coming
9 there, was that that was all included as
10 part of the recruitment package.
11 BY MR. SCHWARTZ:
12 Q. Okay. And you'll supply that to us.
13 What about the catering that you used off
14 site? You did use catering off site, correct?
15 A. Correct, which I did pay for and...
16 Q. So that wasn't part of the package, right?
17 A. No. I paid -- I hired our catering
18 department and paid for it.
19 Q. All right. Can anyone do that, to hire
20 them and do it off site?
21 A. Sure.
22 Q. Anyone can?
23 A. I wouldn't have an issue with it. We've
24 let people borrow some of our catering materials at

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1 no cost, but I --
2 Q. How many -- go ahead. I'm sorry.
3 A. -- but I paid for it.
4 Q. How many people have ever asked to hire
5 Waverly employees for catering of an off-site
6 function?
7 A. I have no idea.
8 Q. Any?
9 A. I have no idea.
10 Q. Is it more than five?
11 A. I have no idea.
12 Q. Could it be zero?
13 MS. DEON: Asked and answered.
14 THE WITNESS: I really don't
15 know.
16 BY MR. SCHWARTZ:
17 Q. Well, if I call tomorrow and say hey, I
18 want to have the Schwartz Bar Mitzvah in Doylestown,
19 would your catering facilities be available?
20 A. Are you going to pay for it?
21 Q. Yeah.
22 A. We very likely might make that happen for
23 you.
24 MS. DEON: Wait a minute.

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1 BY MR. SCHWARTZ:
2 Q. And you would call up --
3 MS. DEON: Let me just
4 understand. You're saying you, a
5 nonemployee?
6 MR. SCHWARTZ: Yeah. The
7 Schwartz Bar Mitzvah.
8 MS. DEON: And a nonresident of
9 Waverly?
10 MR. SCHWARTZ: Right. Right. I
11 had a relative who was a resident but, no,
12 we're not talking about that.
13 BY MR. SCHWARTZ:
14 Q. Okay. So you did a big addition recently
15 with an architecture firm, correct?
16 A. We did.
17 Q. Big construction. And what was the name of
18 the architecture firm?
19 A. RLPS.
20 Q. Right. And you ended up buying a house
21 from one of the principals, right?
22 A. It's a duplex. Yes.
23 Q. Okay. A house is a duplex, right? Or a
24 duplex is a house, right?

22 (Pages 85 to 88)

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1 A. You can call it whatever you want, it's a
 2 duplex.
 3 Q. Okay. Great.
 4 Given the Mission Statement that we talked
 5 about, do you have any problems doing that; anything
 6 bother you about that?
 7 A. No.
 8 Q. Okay. What was efficient and economical
 9 about your being provided with a stipend for health
 10 insurance when you didn't need it?
 11 MS. DEON: Objection. You can
 12 answer.
 13 THE WITNESS: Well, what was said
 14 was not accurate. You either have a
 15 stipend or you have health insurance, you
 16 don't have both, and I never had both.
 17 BY MR. SCHWARTZ:
 18 Q. Well -- so you contest the testimony that
 19 you sat through with respect to Ms. Jungclaus as far
 20 as you're still being paid a stipend even when
 21 you're on the Waverly health plan?
 22 A. Yeah. She lied about that.
 23 Q. She lied about that?
 24 A. Yes.

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1 Q. So what was false about that?
 2 A. I didn't receive a stipend at the same time
 3 that I was on the Waverly healthcare plan.
 4 Q. Is it your position that the stipend
 5 continued, but it was just called something else?
 6 A. No.
 7 Q. When did you stop receiving the \$25,000.00
 8 stipend?
 9 A. I don't think it was ever 25,000.
 10 Q. How much was it?
 11 A. I think it started at 20, when I was hired,
 12 and grew to maybe around 23, 23.5, and then at some
 13 point the Board decided that they wanted to treat me
 14 like every other employee with the same benefit
 15 level and not have this arrangement.
 16 Q. So was your pay cut then?
 17 A. No. They rolled that into my salary as
 18 part of an increase.
 19 Q. So it was sort of like taking the car away
 20 from Bob Supper, but then giving him money, right?
 21 A. I think it's very different than that.
 22 Q. Why is it so different?
 23 A. Well, it's different because the Bob Supper
 24 scenario related to his son getting in trouble with

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1 the car and us taking it away to avoid liability,
 2 whereas the situation with me was the Board trying
 3 to get my compensation the way that they wanted it.
 4 Q. Okay. The third thing under Statement of
 5 Purposes says to provide opportunities for residents
 6 to communicate with the Board, management, and
 7 staff, and to address resident concerns promptly and
 8 in a positive manner, correct? Is that what it
 9 says?
 10 A. Yes.
 11 Q. Were residents able to freely communicate
 12 with the Board?
 13 A. Yes.
 14 Q. Was staff -- I know it doesn't say that --
 15 was staff freely able to communicate with the Board?
 16 A. Sure, certain staff especially.
 17 Q. Which ones?
 18 A. Well, we had resident trustees, so staff
 19 would interact with them all the time, and then each
 20 one of the senior managers who had a committee were
 21 directed often to talk to them. In fact every time
 22 that we had one of the meetings coming up I would
 23 instruct them to make sure to speak with their Board
 24 committee Chair to formulate the agenda and, you

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1 know, get ready for whatever topics we wanted to
 2 cover, so there was terrific access for everybody;
 3 still is.
 4 Q. All right. To provide the -- 4, to provide
 5 the means whereby residents and employees
 6 participate in decisions that affect them. Do you
 7 see that?
 8 A. I do.
 9 Q. And is it your position that you do provide
 10 the means whereby residents and employees can
 11 participate in decisions that affect them?
 12 A. Yes.
 13 Q. What participation was Ms. Jungclaus
 14 allowed when it came to the decision to fire her;
 15 what participation did she have in terms of
 16 participating in decisions that affected her?
 17 A. I don't think No. 4 is tied to decisions --
 18 employment-related decisions.
 19 Q. It says to provide the means whereby
 20 residents and employees participate in decisions
 21 that affect them.
 22 A. Uh-huh.
 23 Q. What participation did Ms. Jungclaus have
 24 in the decision to fire her?

23 (Pages 89 to 92)

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1 A. Again, I don't believe that No. 4 is tied
2 to employment-related decisions.
3 Q. All right. You heard your Counsel's
4 questioning of my client yesterday about telling you
5 things that you didn't want to hear; do you remember
6 that?
7 A. Vaguely.
8 Q. Okay. Did you consider it part of Ms.
9 Jungclaus' job responsibilities to tell you things
10 you didn't want to hear?
11 A. Ms. Jungclaus would communicate to me on a
12 regular basis, oftentimes first thing in the
13 morning, upon my arrival, so she'd tell me things;
14 there's not really anything I don't want to hear as
15 it relates to the -- you know, the employees at
16 Waverly Heights. So she certainly shared with me
17 good, bad, whatever was going on, so I wouldn't term
18 anything things I didn't want to hear.
19 Q. Did you ever say to her, I don't want to
20 hear this?
21 A. No.
22 Q. Do you know of any other employees that
23 were afraid of telling you things that they
24 didn't -- that they were afraid you wouldn't want to

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1 in her speaking style?
2 A. I really have no idea. I don't know that
3 that's for me to decide.
4 Q. Okay. So what official action was taken
5 then with respect to the Board in terms of my
6 client's firing; what was it? Was there a
7 resolution of the whole Board? What was it?
8 A. No. It was not the whole Board, it was the
9 Human Resources Committee of the Board.
10 Q. And did they have a formal vote?
11 A. I don't know if it was a formal vote, but a
12 unanimous decision was reached on that Monday that
13 we only had one option.
14 Q. Was it by a conference -- via conference
15 call?
16 A. Yes.
17 Q. And was everyone there on the conference
18 call?
19 A. Those that weren't there I spoke to
20 separately, so... but I think -- say six of the
21 eight members were there, approximately.
22 Q. And were there minutes of that meeting?
23 A. No.
24 Q. Is that common that there are not minutes

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1 hear?
2 A. No. That's not the relationship I have
3 with the staff.
4 Q. I want to ask you this question and,
5 perhaps, it's repetitive, and remind you that you're
6 under oath. I'm not anxious to depose Ms. Summers
7 unless I have to. Can you honestly tell me that you
8 don't know that she wrote that letter?
9 A. I can honestly tell you that I don't know
10 that she wrote that letter. I have no idea who
11 wrote the letter.
12 Q. Okay. And you didn't find any of that
13 letter, the verbiage, similar to what Ms. Jungclaus
14 testified to in terms of how Ms. Summers would
15 speak?
16 A. She claimed to have a private conversation
17 with her that was verbatim to what was in that
18 letter; I was not privy to that conversation.
19 Q. Did you have a lot of conversations with
20 her about her family and ethics and whatever?
21 A. With Anita Summers?
22 Q. Yes.
23 A. Yes.
24 Q. And can you tell me that this letter is not

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1 of the Board meetings or committee meetings?
2 A. The normally scheduled committee and Board
3 meetings there are; this was a conference call.
4 Q. Was it recorded?
5 A. No.
6 MR. SCHWARTZ: Off the record.
7 (At this time, a discussion was
8 held off the record.)
9 BY MR. SCHWARTZ:
10 Q. Ms. Deon just handed me what was KJ
11 Exhibit-3 that includes a thing called Charge of
12 Discrimination. Do you recall her, in late morning,
13 asking my client about this?
14 MS. DEON: Page 53?
15 MR. SCHWARTZ: Yes.
16 THE WITNESS: Yes.
17 BY MR. SCHWARTZ:
18 Q. When is the first time you saw that?
19 A. I can't say that I know the first time that
20 I saw it.
21 Q. But you did see it at some point?
22 A. At some point.
23 Q. Do you know who brought it to your
24 attention?

24 (Pages 93 to 96)

Appendix 1063

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THOMAS P. GARVIN

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1 A. Probably Counsel.
 2 MR. SCHWARTZ: This would be TG-3
 3 (indicating).
 4 (At this time, e-mails were
 5 marked for identification as TG-3.)
 6 BY MR. SCHWARTZ:
 7 Q. Can you take a few minutes to go through
 8 this?
 9 A. (At this time, the witness complies with
 10 request.)
 11 Okay.
 12 Q. Let's start at the back. And, again, I
 13 apologize --
 14 A. All right.
 15 Q. -- because it starts with 0892 in the back
 16 and then you end up in the front with 0919, so
 17 it's -- the pages are correct according to what you
 18 gave me, but this must have been subject to late
 19 night shuffling.
 20 On page 0892, what is that?
 21 A. That appears to be a map of the campus.
 22 Q. Okay. Turning to page 0893, Tom Garvin --
 23 it's a memo from Tom Garvin to Dick Bauer regarding
 24 External, and you say okay, we can finalize when we

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1 to this e-mail about my client?
 2 A. Yes.
 3 Q. Okay. And, again, is this all about the
 4 procedural steps with respect to the termination of
 5 my client?
 6 A. I think it actually outlines exactly what I
 7 testified to earlier and shows you exactly what I
 8 said.
 9 Q. Okay. Well, I was asking you then about
 10 discussions; now let's look at the paper trail.
 11 All right. And then the next one is
 12 earlier, it's at 3:04 and it's from Mr. Bauer,
 13 right?
 14 A. Yes.
 15 Q. And it's to you and it carries that subject
 16 External, correct?
 17 A. Correct.
 18 Q. All right. Hi again. I really like your
 19 approach to moving this forward and the Board
 20 tactics are superb in my view. Is that what it
 21 starts by saying?
 22 A. That's the first sentence, yes.
 23 Q. Right. And did I correctly read what your
 24 e-mail to him said?

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1 talk tomorrow. I think we can aim to set up the
 2 call for 10:30 Monday morning, if possible.
 3 Hopefully, you can connect with Anita before we talk
 4 tomorrow so we can get her on board before I send
 5 the invitation for a call to the HR Committee. The
 6 conference ends at noon tomorrow, so I'll call you
 7 by 12:30. Also, I expect to have the bullet point
 8 e-mail from our attorney by the end of the day
 9 tomorrow.
 10 So was this the -- what does External mean?
 11 A. We have all e-mails that come from outside
 12 of Waverly Heights marked External in case there's a
 13 spam or something that -- a phishing, with a P,
 14 expedition, we mark them so that employees know it's
 15 coming from outside and not inside the organization.
 16 Q. So your e-mail came from outside of the
 17 organization? It's from you to Mr. Bauer.
 18 A. That's why they're marked External, so I'm
 19 not sure. Perhaps, because I was off site and I
 20 wasn't on the -- it came from my laptop while I was
 21 at a conference so that it -- perhaps, because I was
 22 remotoring in that it marked it External, because
 23 e-mails within the organization don't have that.
 24 Q. Okay. So did you talk to Mr. Bauer prior

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1 A. I don't think you read my entire e-mail.
 2 Q. Okay. Well, whatever. Okay. You don't
 3 contest the fact that that's your e-mail, right?
 4 A. Yeah. The one at the top is mine.
 5 Q. And the one at the top is a response to the
 6 one to him at the bottom, right?
 7 A. That's correct.
 8 Q. Okay. So had you discussed moving forward
 9 and Board tactics with him before he wrote to you on
 10 September 22nd at 3:04?
 11 A. We had discussed how we were going to
 12 proceed at that point.
 13 Q. Okay. What did you say -- you see in the
 14 final paragraph: You might want to think about the
 15 possibility of my saying something to the HR
 16 Committee and, perhaps, the Board later about your
 17 comments to me earlier this year regarding the
 18 individual in question. What's that all about?
 19 A. In, I think it was early, 2016, it might
 20 have been the end of 2017 (sic), we had a situation
 21 where Kathy was unhappy with her -- how much she was
 22 being paid, and so I had filled him in on that at
 23 the time to make sure that he was aware that we had
 24 that going on.

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1 Q. All right. And then let's go to 0894. I
2 guess I should probably start at the bottom one. So
3 the bottom one is from -- and I guess -- am I
4 correct in guessing that once you were away, that
5 this External thing just carried?
6 A. Yeah, that just -- yes. Exactly. And
7 every time -- generally, every time there's a
8 return -- this was pretty early on when we started
9 using that, so it might even add to it, but it has
10 nothing to do with this. There's basically no
11 subject on this, it's just an IT acknowledgement
12 that it's coming from off campus.
13 Q. And so would Content?
14 A. Yeah. That's, I think -- again, that's
15 what we used to use when we were just getting
16 started.
17 Q. All right. I sent -- the bottom; Mr. Bauer
18 starts, does it not, by saying I sent Anita an
19 e-mail last night indicating I would call her this
20 morning, correct?
21 A. That's what it says.
22 Q. And then it says I have not read the policy
23 information that you sent yet. What was that?
24 What's he talking about there?

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1 A. I -- you know, I'm not 100 percent sure, I
2 would have to look, but I think it's all the
3 policies related to this issue that we were dealing
4 with, which I think you have exhibits that are most
5 of what they -- what they were, and I forget what...
6 Q. Okay. Is that the Social Media Policy?
7 A. It very well may have been included in
8 that. I think there was quite a few.
9 Q. And then you say above, Friday
10 September 23rd, 2016, 9:14 a.m. you reply to him,
11 right?
12 A. Yes. That's a reply to Dick.
13 Q. Okay. And you say: I'm figuring that we
14 should probably send a letter and the attorney's
15 review just prior to the call. Without telling me
16 what was in it, did Ms. Deon prepare a review that
17 you shared with the Board?
18 A. You know, I think what that's referring to
19 is the letter itself, the exhibit -- whatever
20 exhibit it was, it's the actual anonymous letter,
21 because we wanted to share that with them and give
22 them time to review it before the call, so... And I
23 think I had bullet points from our attorney just on,
24 you know, the issues at hand.

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1 Q. But this says send the letter and the
2 attorney's review, so it's something more than the
3 letter, right, that was being sent?
4 A. Yeah. That's what I just said, in addition
5 the attorney's bullet points on kind of what the
6 crux of the issues were.
7 Q. Oh, okay. So without telling me, she had
8 prepared some bullet points, correct?
9 A. That's what I recall.
10 Q. Okay. Then let's go to 0896. That's from
11 you to Bauer, Mahoney, Bragg, Davis, Fleischer,
12 Kathleen McEndy, Charles Soltis; cc Anita Summers.
13 Who are the folks in the To caption after To, colon?
14 A. So they're Board members who made up the
15 Human Resources Committee.
16 Q. Okay. And cc Anita Summers, why was she
17 getting this?
18 A. Because we had made the decision that as
19 the Chairwoman of the Ethics Committee, that she
20 should be involved in this because of the ethical
21 issues.
22 Q. Are you sure that you didn't cc her on this
23 because she authored the anonymous letter?
24 MS. DEON: Objection. You can

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1 answer.
2 THE WITNESS: I told you I do not
3 believe nor do I have any knowledge that
4 she was the author of that letter.
5 BY MR. SCHWARTZ:
6 Q. All right.
7 A. She was copied because she's the
8 Chairperson of the Ethics Committee. Oh, it even
9 says that.
10 Q. Where does it say that? It says cc.
11 A. Second paragraph. Also, Dick and I feel
12 that the nature of the issues warrant including
13 Anita as Chair of our Ethics Committee.
14 Q. Why did you think it needed to involve the
15 Ethics Committee? Didn't this committee have enough
16 power to do what it was going to do?
17 A. Just good -- good practice. The more minds
18 looking at this because of the serious nature of the
19 offense.
20 Q. Does the Ethics Committee have any bylaws
21 or procedures, anything like that?
22 A. They have a -- it's part of our corporate
23 or Board Policy Manual.
24 Q. So that's part of the Board Policy Manual?

26 (Pages 101 to 104)

THOMAS P. GARVIN

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1 A. (Witness nods head.)
 2 Q. Does the Ethics Committee have any -- is
 3 there anything in that Board Policy Manual about
 4 conducting investigations?
 5 A. I'm not sure.
 6 Q. Anything in the Board Policy Manual with
 7 respect to treatment of anonymous letters?
 8 A. Again, I'm not sure. I don't have it in
 9 front of me.
 10 Q. Okay. Nor do I.
 11 0897.
 12 A. Uh-huh.
 13 Q. It's an e-mail dated September 25th at 4:42
 14 from you to Mr. Bauer, et al., correct?
 15 A. Well, it's to the entire Human Resources
 16 Committee with a copy to the head of the Ethics
 17 Committee, if I'm not mistaken.
 18 Q. And is that the same group of people as we
 19 just -- as I just talked about with respect to your
 20 September 25th e-mail? Is it the same folks?
 21 A. Yeah. It looks like it is.
 22 Q. Okay. Why do all of their e-mail addresses
 23 show up on this and not the other stuff?
 24 A. You know why I believe, is that we --

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1 somewhere around this time we had created/given the
 2 Board Waverly Heights' e-mail addresses, but they
 3 were not consistently being used, so sometimes --
 4 the other e-mails are probably their personal e-mail
 5 addresses. I don't know, it's just the way Outlook
 6 converts it.
 7 Q. And am I correct that Ms. Summers continued
 8 to use her Wharton U Penn e-mail?
 9 A. Generally, yes. I mean most of our
 10 trustees use their -- you know, their personal
 11 e-mail, not the Waverly Heights' e-mail.
 12 Q. But she's not at Wharton or U Penn and
 13 hasn't been for a long time, has she?
 14 A. I believe she's an emeritus professor --
 15 Q. Right.
 16 A. -- there.
 17 Q. Right. Okay. At the end -- well, you
 18 start by saying we have an urgent need to have a
 19 confidential conference call, and you put that in
 20 caps, right?
 21 A. Yes.
 22 Q. And then at the end you say please keep
 23 this call confidential, correct?
 24 A. That's correct.

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1 Q. Was confidentiality throughout this process
 2 maintained?
 3 A. Related to the call; yeah, absolutely, as
 4 far as I know.
 5 Q. And as far as you know was confidentiality
 6 maintained with respect to why my client was fired?
 7 MS. DEON: Objection. You can
 8 answer.
 9 THE WITNESS: Yeah. As --
 10 BY MR. SCHWARTZ:
 11 Q. If you know.
 12 A. -- as far as I know --
 13 MS. DEON: As to whom?
 14 THE WITNESS: Yeah. I mean -- as
 15 to whom; as to me?
 16 BY MR. SCHWARTZ:
 17 Q. As to anyone that would be on this e-mail,
 18 do you have any reason to believe that they breached
 19 your request for confidentiality?
 20 A. No. I don't have any reason to believe
 21 they did.
 22 Q. Do you have any knowledge of things leaking
 23 out as far as my client's termination?
 24 A. No.

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1 Q. Then at the bottom it says 0898; we have
 2 your e-mail saying we're ready for the call, and Mr.
 3 Bauer, two minutes before the call, says I have a
 4 feeling that you are having a challenging morning.
 5 Let me know how you are doing when you can. Thanks.
 6 Why did he say that?
 7 A. You'd have to ask him that question.
 8 Q. Well, I will, but why do you think he said
 9 that?
 10 MS. DEON: Objection. You can
 11 answer.
 12 THE WITNESS: You know, I would
 13 assume it's because of the issue I was
 14 dealing with was a very difficult one; one
 15 that didn't make me very happy to have to
 16 make.
 17 BY MR. SCHWARTZ:
 18 Q. Well, you were aware you had alternatives,
 19 didn't you?
 20 A. I really didn't have any alternative.
 21 Q. You couldn't have done the progressive
 22 discipline?
 23 A. The will of the Human Resources Committee
 24 was -- was to terminate her.

27 (Pages 105 to 108)

THOMAS P. GARVIN

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1 Q. Who advocated termination to the Committee;
 2 you?
 3 A. It was a -- the HR Committee's decision. I
 4 didn't advocate one way or the other. We went into
 5 it, as you can see by what's written here, sort of
 6 open-minded, but with a very serious issue.
 7 Q. So you didn't have -- without getting into
 8 what your lawyer's decision was -- you didn't have a
 9 position on whether she should be fired or not when
 10 you were sending these e-mails?
 11 A. I felt that it could very well end up that
 12 way.
 13 Q. Okay. Is it fair to say that you're closer
 14 to Mr. Bauer than anybody else on the Board?
 15 A. I'm close to -- whoever is the Board Chair
 16 at that moment I tend to be close with. I'm close
 17 with Dick, he's been the Board Chair for three
 18 years.
 19 Q. Okay. 0899 it's from -- well, let's go to
 20 the bottom first. 2:29 from Anita Summers and the
 21 subject is Quick Thought, and it says Tom, you are
 22 such a wondrous CEO. Quick Thought: Should you
 23 freeze her Waverly e-mail address and look over
 24 recent mail? Anita. Is that what she says?

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1 A. That's what's written on this e-mail. Yes.
 2 Q. Yeah. Did you have a discussion with her,
 3 aside from the e-mail, about freezing my client's
 4 Waverly e-mail address and looking over her e-mail?
 5 A. Not that I recall, just my e-mail response
 6 which is on the top of this page.
 7 Q. Right. Okay. Did you end up freezing her
 8 Waverly e-mail address?
 9 A. Yes.
 10 Q. And did you look through her recent mail?
 11 A. We did.
 12 Q. And was this pursuant to Anita's suggestion
 13 or did you have this idea on your own?
 14 A. No. We would do that for anybody in that
 15 position.
 16 Q. Do you feel that -- this might be a bad
 17 term to use -- do you feel that Ms. Summers had a
 18 hard-on for Ms. Jungclaus?
 19 MS. DEON: Objection.
 20 BY MR. SCHWARTZ:
 21 Q. That she was out to get her?
 22 A. Which question do you want me to answer
 23 here?
 24 Q. Do you feel that Anita Summers didn't like

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1 Ms. Jungclaus?
 2 A. I really don't know.
 3 Q. Ms. Summers ever express problems between
 4 her and Ms. Jungclaus prior to this whole Twitter
 5 situation?
 6 A. Not that I recall.
 7 Q. So she never said she had any problems with
 8 Kathy?
 9 A. No. And, believe me, she would tell me if
 10 she did.
 11 Q. Well, she'll get that opportunity.
 12 Then you say -- and what do you think
 13 motivated this e-mail? Was it your prior e-mail
 14 that said we're going to be scheduling this and she
 15 said you are so wondrous? I mean what motivated
 16 this response? Do you know?
 17 A. I think it's in response to one of these
 18 previous e-mails.
 19 Q. Right. Was she a big fan of yours?
 20 MS. DEON: Objection.
 21 THE WITNESS: I think her
 22 comments speak for themselves.
 23 BY MR. SCHWARTZ:
 24 Q. Okay. And you said 10 minutes -- 20

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1 minutes later -- 30 minutes later: Thank you so
 2 much, Anita. I appreciate your support. And then
 3 you agree that you'll pull her e-mail and freeze
 4 everything the minute she is released. Dick is
 5 coming tomorrow afternoon to be with me when I
 6 terminate her employer (sic).
 7 A. I'm sorry, where are you at now?
 8 Q. I'm reading the second paragraph.
 9 MS. DEON: Just wait for a
 10 question.
 11 BY MR. SCHWARTZ:
 12 Q. Okay. Let me just read the second
 13 paragraph because I stumbled. I will definitely
 14 pull her e-mail and freeze everything the minute she
 15 is released. Dick is coming tomorrow afternoon to
 16 be with me when I terminate her employer --
 17 employment. At that point her access to everything
 18 will be cut off. And then you said it should be an
 19 interesting day, correct?
 20 A. Yes. That's what it says.
 21 Q. Why was Dick coming tomorrow afternoon to
 22 be with you?
 23 A. Well, he came to be a witness, if you will,
 24 to the termination.

28 (Pages 109 to 112)

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1 Q. Oh, okay. You didn't need him to be there
2 for any reason, right?
3 MS. DEON: Objection. He just
4 said he was there to be a witness.
5 BY MR. SCHWARTZ:
6 Q. Did you ask him to come to be a witness?
7 A. Yes.
8 Q. There's no Board policy, is there, that a
9 member of the Board has to be present when you fire
10 an employee?
11 A. No. There's no Board policy that says
12 that, but when it's a member of the, you know,
13 senior management team and especially when it
14 involves the Vice President of Human Resources,
15 there's not a whole lot of alternative.
16 Q. Did you ever give it any thought to having
17 a woman in the room?
18 A. Well, the Chairman of the Board made the
19 most sense to me.
20 Q. Did you ever think about having a woman in
21 the room?
22 A. The Chairman of the Board made the most
23 sense to me.
24 Q. Okay. Did you consider having a woman in

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1 that?
2 A. We did.
3 Q. And the severance agreement -- was part of
4 the severance agreement -- did the severance
5 agreement include any language that she would have
6 to keep matters confidential?
7 A. You know, I don't have it in front of me,
8 but I know, typically, they do. It was a generous
9 severance agreement.
10 Q. How much was it?
11 A. You know, I think it was six months of
12 salary plus a payout of her PTO, plus continuing her
13 healthcare, a good reference for future employment,
14 and probably non-contest of her unemployment. You
15 know, I'd have to see it to get it exactly, but I
16 believe that was the gist of it.
17 Q. Okay. Let's see, 0901. In that
18 September 25th, 2016, 4:59 p.m. is when you wrote to
19 the -- let me back up. Let's go to 0900, I'm sorry.
20 Go to the back page of that. Okay. We did deal
21 with that. Let's go to 0901. This is where you say
22 to the HR Committee on September 25th at 4:59, I
23 received the attached anonymous letter last week
24 regarding the conduct of Kathy Jungclaus with

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1 the room?
2 MS. DEON: Objection. Asked and
3 answered.
4 MR. SCHWARTZ: No. It isn't.
5 BY MR. SCHWARTZ:
6 Q. Did you consider -- did it ever cross your
7 mind, maybe I should have a female in the room? Did
8 it cross your mind or didn't it?
9 A. Gender wasn't -- was not a deciding factor
10 on who was going to be in the room, I invited the
11 Chairman of the Board.
12 Q. Okay. Then we go to Waverly 0900. Who's
13 Eleanor Davis?
14 A. A Board member.
15 Q. What committee is she on?
16 A. Well, definitely the Human Resources, I'm
17 not sure what other ones she's on.
18 Q. Okay. And then you put out at 3:02 on the
19 top, that I want to let you know that everybody on
20 the Committee call was in agreement that Kathy
21 Jungclaus should be terminated, correct?
22 A. That's correct. That's what it says.
23 Q. We will offer her the opportunity to resign
24 with a severance agreement put in place. Did you do

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1 respect to her personal Twitter account. The
2 content of the letter is the subject of our upcoming
3 confidential conference call. And then, you know,
4 it then goes on to say that you've asked one of the
5 labor attorneys to review the situation and that our
6 attorney is summarizing legal issues in the e-mail
7 included below. Is the labor relations attorney Ms.
8 Deon?
9 A. Yes.
10 Q. Okay. So she is synonymous with the quote
11 our attorney; you didn't have other attorneys?
12 A. That's correct.
13 Q. Okay. Let's go to 0903, and then 0904 is
14 September 27th at 5:29 p.m., and you sent that to
15 the Committee again and Ms. Summers, correct?
16 A. Yes.
17 Q. And you were basically saying -- giving
18 them an update, and you said she was asked -- she
19 was -- I met with her late this afternoon and
20 informed her that she was being asked to resign
21 effective immediately. It went about as well as you
22 could expect, but the end result is that she is no
23 longer an employee of Waverly Heights. I'll send
24 notice to the full Board within the next 24 hours.

29 (Pages 113 to 116)

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1 You wrote that, right?
 2 A. Yes.
 3 Q. Okay. What did you mean by saying it went
 4 about as well as you would expect?
 5 A. Well, whenever someone is terminated you
 6 don't expect it to be an easy thing and it was not.
 7 Q. Did you mean the -- it could have -- would
 8 it have been better if she had -- in terms of your
 9 view, would it have been better if she had signed
 10 the separation agreement and resigned?
 11 A. Well, that wouldn't have been in -- you
 12 know, in play at this point.
 13 (At this time, a short break was
 14 taken.)
 15 BY MR. SCHWARTZ:
 16 Q. Okay. 0905 is an e-mail from Eleanor
 17 Davis, correct?
 18 A. Yes.
 19 Q. And who is she? What committee is she on?
 20 A. She's a member of the Board of Trustees and
 21 is on the Human Resources Committee.
 22 Q. Okay. And then on page 0906 is an e-mail
 23 from Ed Mahoney; who is he?
 24 A. A Board member and a member of the Human

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1 Resources Committee.
 2 Q. Okay. 0907 is an e-mail from Dick Bauer to
 3 you, G. Bragg; who he? Who's he?
 4 A. Gerry Bragg's a Board member and a member
 5 of the Human Resources Committee.
 6 Q. And who's E. Davis?
 7 A. That's Eleanor Davis.
 8 Q. The rest of these people are all Human
 9 Resources Committee people?
 10 A. That is correct.
 11 Q. And Mr. Soltis, is he on the Human
 12 Resources Committee?
 13 A. Yes.
 14 Q. Are any of these people sort of like ex
 15 officio, like the Board Chair's on all the
 16 committees? Do you have that?
 17 A. Yeah. The Board Chair is a member of all
 18 committees ex officio, and the Board Chair is
 19 automatically the Chair of the Human Resources
 20 Committee.
 21 Q. Okay. So that was Mr. Bauer acting in that
 22 capacity?
 23 A. Correct.
 24 Q. It says Tom and I -- second sentence -- oh,

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1 no. Third sentence of the first paragraph; Kathy's
 2 comments were very telling. What's that mean?
 3 A. I think we produced notes about how that
 4 meeting went and the things that Kathy said,
 5 admitting that she did the Tweet and then
 6 apologizing profusely for sending such a Tweet,
 7 asking us to, you know, tell the Board how sorry she
 8 was -- I mean amongst a lot of other things but, you
 9 know, she knew she was -- she knew she was wrong and
 10 then tried to say she didn't do it, and that's where
 11 everything got a little...
 12 Q. Isn't it fair to say she was pretty
 13 emotional in that meeting?
 14 A. She was emotional. You know, we did offer
 15 to have the nurse come and check on her because she
 16 was, you know, breathing real heavily, and then we
 17 also offered to get her a ride home, send her in an
 18 Uber, so... You know, again, the notes speak for
 19 themselves that I know you have.
 20 Q. All right. I just --
 21 A. But that's where --
 22 Q. -- was wondering what you thought his
 23 specific -- when he said Kathy's comments were very
 24 telling -- and, you know, I'll be asking him about

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1 that, but my question is, what do you think he was
 2 talking about when he said her comments were
 3 telling?
 4 A. I think I just answered that.
 5 Q. Okay. Okay. That's fine.
 6 THE WITNESS: Can you read that
 7 back for him --
 8 MR. SCHWARTZ: No. No, don't.
 9 THE WITNESS: -- or is that
 10 necessary?
 11 MR. SCHWARTZ: No. No, it's not
 12 necessary.
 13 BY MR. SCHWARTZ:
 14 Q. Then it says thank you all for your
 15 thoughtful consideration and willingness to be
 16 generous under these unusual circumstances. Is that
 17 what it says? Is that what that sentence says?
 18 A. Yes. It is.
 19 Q. What was generous?
 20 A. I really don't know, you'd have to ask Dick
 21 Bauer that.
 22 Q. All right. We will.
 23 (At this time, a short break was
 24 taken.)

30 (Pages 117 to 120)

THOMAS P. GARVIN

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1 BY MR. SCHWARTZ:
 2 Q. Let's skip to 0912, it's an e-mail from you
 3 to All Waverly Care Associates Employees and All
 4 Waverly Heights Employees and it says Announcement,
 5 correct?
 6 A. Correct.
 7 Q. And who did this go to?
 8 A. People who are on e-mail at Waverly Heights
 9 and Waverly Care Associates.
 10 Q. Is that virtually everybody?
 11 A. No.
 12 Q. So what kind of employees are not on the
 13 e-mail?
 14 A. Most of the sort of line staff, you know,
 15 housekeeping, maintenance, CNAs, I think some
 16 nurses, just people in
 17 non-management/non-supervisory type roles for the
 18 most part.
 19 Q. So they don't get the e-mail?
 20 A. Correct.
 21 Q. Okay. And it says what it says, right? I
 22 regretfully inform you Kathy isn't with the
 23 organization; that's the term you use, right?
 24 A. That's what it says. Yes.

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1 Q. Okay. Who are Jacquie, J-A-C-Q-U-I-E,
 2 Levin and Jennifer Davies?
 3 A. Jacquie Levin was the benefits specialist
 4 and the recruiter in Human Resources, and Jennifer
 5 Davies was the human resources assistant.
 6 Q. Okay. So are you, basically, saying that
 7 they were the designated temporary replacements?
 8 A. Well, no, what I said here was that members
 9 of senior management and our current Human Resources
 10 Department staff, which is Jacquie Levin and
 11 Jennifer Davies, will fulfill the needs of our
 12 employees during the recruitment and transition
 13 period, that's what I said.
 14 Q. Okay. Were Ms. Levin and/or Ms. Davies
 15 sent home early the day that my client was fired?
 16 A. I don't recall that. No. Not that I
 17 recall.
 18 Q. Would you have been the one to send them
 19 home early?
 20 A. Probably, but I don't recall doing that.
 21 Q. Looking at 0914, who's Annie Conroy?
 22 A. Well, Anne Conroy is a Board member and a
 23 resident.
 24 Q. And then on the bottom you see an e-mail

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1 from Dick Bauer sent September 28th, 2016 at 1:23,
 2 and is that an e-mail to the entire Board?
 3 A. It appears that it is.
 4 Q. And he says, in part, that you have -- Tom
 5 has been thoughtful and deliberate throughout the
 6 discovery and termination process, correct? Is that
 7 what it says in part?
 8 A. In part, yes.
 9 Q. Did you ask him to write this e-mail?
 10 A. No. I did not.
 11 Q. Last page, 0918 -- or next to the last
 12 page, 0918, who's Susan Buehler?
 13 A. Susan Buehler is -- was at our public
 14 relations firm.
 15 Q. Really? E-mailing employee announcement:
 16 Hi, Susan. Attached is the memo that went to staff.
 17 I'll also send you the memo that went to our
 18 residents. Correct?
 19 A. That's -- yep. That's what it says.
 20 Q. Why did you contact her if everything was
 21 supposed to be confidential?
 22 A. Well, she's our public relations person,
 23 and the notice was certainly not confidential; we
 24 sent it to all of our residents, all of our

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1 employees and so it made sense that we'd send it to
 2 our PR staff just like we would anything else, so
 3 that was not a confidential document by any means.
 4 Q. Well, what did you expect her to do with
 5 the announcement?
 6 A. Just having her be aware of what was
 7 happening.
 8 Q. Did you expect her to put out an
 9 announcement to the media about this?
 10 A. No.
 11 Q. Do you know if she did?
 12 A. No.
 13 Q. No, you don't know or she did not?
 14 A. She did not.
 15 Q. So whenever you fire somebody do you send a
 16 copy, you know, memorializing that to Susan Buehler?
 17 A. You know, we had just recently started with
 18 a PR firm; I'm not sure when exactly we started with
 19 them but, yeah, anything that affects the
 20 organization. I think, you know, in looking at
 21 this, November 23rd, I probably already received
 22 your very interesting letter at that point. What's
 23 the date of that letter?
 24 Q. This is November 23rd.

31 (Pages 121 to 124)

THOMAS P. GARVIN

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1 A. And what's the date of your letter that you
2 sent to my Board?
3 Q. Do you want to conduct the deposition?
4 You're doing great, but go ahead. November 8th.
5 A. All right. Well, there you go. So I sent
6 it to Susan Buehler after false accusations were
7 made against me and my entire organization in a
8 nine-page, single-spaced, typewritten letter, so it
9 seemed appropriate to do that.
10 Q. Well, that was, what, in excess of several
11 weeks of the date of that letter, right? Why did
12 you do it on November -- why did you wait till
13 November 23rd?
14 A. I don't recall that.
15 Q. Did you ever say to her I better notify you
16 of this because -- did you ever talk to her about my
17 letter?
18 A. I don't recall, but it wouldn't surprise me
19 if I did. I have nothing to hide, so I have no
20 problem sharing that with the people who protect our
21 organization.
22 Q. What does she do to protect your
23 organization?
24 A. Handles our public relations.

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1 Q. So was she going to be the spokesman if
2 something came out about this?
3 A. No.
4 Q. Why did you send it to her?
5 A. Because she's our public relations firm.
6 Q. What's the name of her firm?
7 A. Bellevue Communications.
8 Q. Do you know who heads that firm?
9 A. I don't.
10 Q. Could it be Brian Tierney?
11 A. I really don't know.
12 Q. Would it refresh your memory if you sensed
13 that I might have put that letter out in the public
14 and you wanted somebody to respond to it?
15 A. No, just -- again, we engaged a public
16 relations firm a few years ago; I'm not sure of the
17 exact date, and anything that -- we bring them in on
18 things like this, so...
19 Q. Did you ever have a discussion with Ms.
20 Buehler about the PR aspects of Mr. Soltis' hate
21 e-mail?
22 A. I don't recall.
23 MS. DEON: Objection.
24 BY MR. SCHWARTZ:

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1 Q. Don't recall.
2 What was the reason that you hired a PR
3 firm a couple years before this?
4 A. It was a suggestion of the Board that we
5 should have someone do media training and also help
6 us with all of our marketing and advertising because
7 developing a stronger -- stronger public relations
8 presence was one of the Vice President of
9 Marketing's goals, and so -- and we really didn't
10 have anybody coordinating all of our --
11 coordinating, creating all of our marketing and
12 advertising, handling our social media, things of
13 that nature, so they've been very helpful with all
14 of those things.
15 Q. Well, how does that announcement that you
16 made, how does that e-mail that you made pertaining
17 to my client not being there any longer serve any of
18 the functions you just described?
19 A. Like I said, this is a long time ago, but
20 we received your nine-page letter and so, you know,
21 we needed to make sure that we were -- make sure
22 people knew within the organization about it, and
23 they're under contract with us, so...
24 Q. Are they paid hourly?

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1 A. No.
2 Q. Okay. Do you know if she ever reviewed my
3 letter?
4 MS. DEON: Susan Buehler?
5 MR. SCHWARTZ: Yes.
6 THE WITNESS: I don't think so,
7 but I can't really recall.
8 BY MR. SCHWARTZ:
9 Q. Don't you have a Vice President of
10 Marketing?
11 A. We do.
12 Q. Wouldn't that be within her role? Was she
13 so inadequate that you needed Bellevue
14 Communications?
15 MS. DEON: Objection. You can
16 answer.
17 THE WITNESS: So Bellevue
18 Communications helps us with all of our
19 public relations and our marketing, our
20 development of advertisements and marketing
21 content, doing SEO, and they help us with
22 training on media relations, they help us
23 with website development, so... Yeah. I
24 mean the Vice President of Marketing

32 (Pages 125 to 128)

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1 doesn't have all of that, you go through a
 2 third-party, which is why we hired Bellevue
 3 Communications; they serve multiple roles
 4 for us and have done a terrific job.
 5 BY MR. SCHWARTZ:
 6 Q. Have they ever done any investigation into
 7 social media matters with respect to your employees
 8 or Board members?
 9 A. Any investigations?
 10 Q. Right.
 11 A. No.
 12 Q. Did they ever review the VP of Marketing's
 13 Facebook account?
 14 A. I have no idea.
 15 Q. Did you ever ask them?
 16 A. No.
 17 Q. Did you ever say to them gee, you know,
 18 we're sort of concerned about social media practices
 19 of our employees, you know, can you check into this?
 20 Did you ever do that?
 21 A. To Bellevue Communications, no.
 22 Q. Or to anybody else?
 23 A. Not that I can recall.
 24 Q. All right. Let's go to the full handbook.

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1 MR. SCHWARTZ: This would be TG-4
 2 (indicating).
 3 (At this time, a document was
 4 marked for identification as TG-4.)
 5 BY MR. SCHWARTZ:
 6 Q. Do you know what this is?
 7 A. It would appear to be the employee
 8 handbook.
 9 Q. Turn to -- this is something you produced,
 10 and turn to page 23 or Bates stamp Waverly-0833.
 11 A. (At this time, the witness complies with
 12 request.)
 13 Q. Do you see that page?
 14 A. I do.
 15 Q. Can you compare that to page 23 of Exhibit
 16 KJ-4?
 17 A. Okay. I see that.
 18 Q. They're totally different, aren't they?
 19 A. It appears that they are.
 20 Q. Okay. So could KJ-4, page 23, be from some
 21 other older or newer handbook, if you know?
 22 A. This one's dated Employee Handbook 2014.
 23 May I see the one that you're --
 24 Q. (Indicating).

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1 A. This one does not have a date, but 2014 is
 2 the most recent so this, perhaps, was the one before
 3 that, but I'm -- you know, I'm guessing. I don't
 4 see a date on this.
 5 Q. Yeah. There certainly wasn't one
 6 afterwards, right?
 7 A. No. Correct.
 8 Q. All right. Be that as it may.
 9 Why was Ms. Jungclaus fired?
 10 A. For the Tweet that is whatever exhibit that
 11 it is where she singled out a protected class of
 12 people, addressed doing a poll of --
 13 Q. Okay. RJ-1, correct?
 14 MS. DEON: Excuse me, let him
 15 finish his answer.
 16 MR. SCHWARTZ: Oh. Go ahead,
 17 keep going.
 18 THE WITNESS: -- minorities in
 19 the workplace and expressing a political,
 20 you know, opinion on her personal Twitter
 21 which was easily linked to the Waverly
 22 Heights' Twitter account, and we found that
 23 to be conduct that was very unbecoming of
 24 the Vice President of Human Resources and,

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1 quite frankly, compromised her ability to
 2 do her job going forward.
 3 BY MR. SCHWARTZ:
 4 Q. So what part of this handbook did that
 5 violate?
 6 A. I'm going to need a little bit of time to
 7 review this document.
 8 Q. Well, without referring specifically to the
 9 document, is there a category or a heading that
 10 might help?
 11 A. I just need some time to review the
 12 document.
 13 Q. All right. Take your time.
 14 A. It's going to be between -- I mean there
 15 are multiple policies that are addressed that are --
 16 this is the handbook, but then they're also backed
 17 up by policies, so Corporate Compliance, Business
 18 Ethics, but then specifically I'm looking for the --
 19 okay. So page 78.
 20 Q. Okay.
 21 A. And these are just examples that are
 22 included in the handbook. It says examples of more
 23 serious offenses which may result in immediate
 24 dismissal include, but are not limited to, and if

33 (Pages 129 to 132)

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1 you go down, halfway through, you start with
 2 immoral, indecent or improper conduct; willful
 3 hampering of production or gross carelessness, then
 4 conduct which is detrimental to resident care or
 5 organizational operations.
 6 Q. Did you bring this up to the Board's
 7 attention, these specific ones?
 8 A. I think it was fairly obvious that we
 9 had -- that this was at the critical level of
 10 conduct detrimental to the operations and public
 11 relations of Waverly Heights.
 12 Q. But did you bring up these specific
 13 sections with any trustees?
 14 A. No.
 15 Q. Anything else? And you're sure this is the
 16 latest version?
 17 A. It's the one that was created in 2014, so I
 18 believe that's the last one that was done; certainly
 19 the one that was in effect at the time of Kathy's
 20 termination.
 21 Q. Okay. Anything else?
 22 A. Well, you know, there's a lot here;
 23 Corporate Compliance, Ethical Standards and, again,
 24 I haven't read this word-for-word right here, but

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1 those were the things that we were, you know,
 2 concerned about; Social Media Policy, et cetera,
 3 Code of Conduct.
 4 Q. And, again, did you raise any of those buzz
 5 words with the Board?
 6 A. I don't recall. We dealt with the issue
 7 that we were -- that we were handed.
 8 Q. Did the Board ever reflect on the handbook
 9 and say well, these are the ones that we think
 10 apply?
 11 A. We -- yeah. We reviewed our policies,
 12 which are really the meat; the handbook is not the
 13 meat, the policies are the crux of what we reviewed,
 14 and we absolutely did review those, so...
 15 Q. Well, let me direct your attention to
 16 something that came up in the Commonwealth Court
 17 matters; Personal Blogs, page Waverly-0854 or page
 18 44. Please turn to that.
 19 A. (At this time, the witness complies with
 20 request.)
 21 All right.
 22 Q. The heading Personal Blogs, under it the
 23 first sentence says Waverly Heights respects the
 24 right of employees to write blogs and use social

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1 networking sites and does not want to discourage
 2 employees from self-publishing and self-expression;
 3 is that correct?
 4 A. That's what it says. Yeah.
 5 Q. And is that the statement of policy with
 6 respect to that?
 7 MS. DEON: Objection. You can
 8 answer.
 9 BY MR. SCHWARTZ:
 10 Q. Is that a statement of policy?
 11 A. You know, it's a statement in the handbook,
 12 I don't know that it's necessarily a statement of
 13 policy.
 14 Q. And then it goes further, it says Waverly
 15 Heights respects the right of employees to use blogs
 16 and social networking sites as a medium of
 17 self-expression and public conversation and does not
 18 discriminate against employees who use their media
 19 for personal expressions and affiliations or other
 20 lawful purposes. Is that what it says?
 21 A. That's what it says.
 22 MS. DEON: These media.
 23 MR. SCHWARTZ: Yes, I'm sorry,
 24 these media.

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1 BY MR. SCHWARTZ:
 2 Q. So did my client violate those two
 3 sentences?
 4 A. Well, what your client violated, in her
 5 role as the Vice President of Human Resources, she
 6 connected herself very clearly to Waverly Heights in
 7 a, you know, public domain, where she singled out a
 8 class of employees based on their race, in that
 9 case, conducted a poll, and then kind of bragged
 10 about it and said 100 percent of those that she
 11 polled were voting for Trump, so...
 12 Q. But -- okay. Go ahead. Do you find that
 13 the -- do you feel that the Commonwealth Court ruled
 14 differently than what you just expressed?
 15 MS. DEON: Objection. You can
 16 answer.
 17 THE WITNESS: Yeah. I mean, in
 18 my opinion, the Commonwealth Court doesn't
 19 rule on -- they just ruled on is she
 20 eligible for unemployment compensation;
 21 they're not making any ruling on -- you
 22 know, on the issue itself.
 23 BY MR. SCHWARTZ:
 24 Q. Wasn't the argument -- wasn't all the

34 (Pages 133 to 136)

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1 argument over that Section 402 which dealt with
2 willfulness?
3 MS. DEON: Objection.
4 BY MR. SCHWARTZ:
5 Q. Do you remember that being an issue?
6 MS. DEON: Objection. You can
7 answer.
8 THE WITNESS: Repeat that. Which
9 argument?
10 BY MR. SCHWARTZ:
11 Q. Do you remember this question about whether
12 she was in willful noncompliance with any rules? Do
13 you remember that issue coming up?
14 A. Well, willful misconduct is usually what
15 the unemployment uses to consider whether or not
16 unemployment rights are granted, so...
17 Q. Wasn't the language of the Social Media
18 Policy brought into focus in those proceedings?
19 A. I believe that it was. It's been a while
20 since I've looked at that.
21 Q. All right. What about this next paragraph:
22 Employees are not permitted to use employer owned
23 equipment including computers, company licensed
24 software or other electronic equipment nor

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1 A. She identified herself as the VP of Human
2 Resources at a company outside of Philadelphia under
3 her real name, K. Jungclaus or however it's written
4 there, and a Google search would have turned that
5 up. And I see, also, the sentence that you skipped:
6 Employees are not permitted to use blogs or social
7 networking sites to harass, threaten, discriminate,
8 defame or disparage other employees, residents or
9 anyone associated with or doing business with
10 Waverly Heights.
11 Q. And you felt that she did that?
12 A. I felt that she singled out a class of
13 employees, you know, within her -- within her Tweet
14 and then spoke on their behalf as though it was --
15 Q. So isn't your testimony consistent with --
16 THE COURT REPORTER: I didn't
17 hear the end of his answer.
18 BY MR. SCHWARTZ:
19 Q. Are you finished?
20 (At this time, the court reporter
21 read back from the record as was
22 requested.)
23 THE WITNESS: -- representing
24 100 percent of that protected class.

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1 facilities or company time to conduct personal
2 blogging or social networking activities.
3 Did you find that she did anything there
4 that involved employer owned equipment, et cetera?
5 A. I really don't know when she did her
6 Tweeting.
7 Q. You don't?
8 A. Well, I could probably look at it on the --
9 whatever exhibit that was, but...
10 Q. Well, do you know whenever she -- do you
11 know if she used any employer owned equipment?
12 A. No. I'm not sure if she did.
13 Q. You're sure she did?
14 A. I said I'm not sure if she did.
15 Q. Oh, you're not sure if she did. Okay.
16 Then it says in the last sentence of that
17 paragraph: Employees are not permitted to post on
18 personal blogs or other sites the trademark or logo
19 of Waverly Heights or any business with a connection
20 to Waverly Heights.
21 Did my client post on a personal
22 blog anything -- or on -- did she post on RJ-1
23 anything with respect to trademark or logo of
24 Waverly Heights?

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1 BY MR. SCHWARTZ:
2 Q. And what's the protected class?
3 A. African Americans as evidenced in the Tweet
4 with the capital A, capital A.
5 Q. So you would agree with the anonymous
6 letter that, basically, accused her of being a
7 racist, right?
8 MS. DEON: Objection.
9 THE WITNESS: No one ever called
10 her a racist.
11 BY MR. SCHWARTZ:
12 Q. Never?
13 A. Never. Not from my lips or anybody on the
14 Board's.
15 Q. What about the anonymous letter; isn't that
16 calling her a racist?
17 A. It -- I don't believe it calls her a
18 racist.
19 Q. All right.
20 A. She -- what actually happened was when --
21 and it's in the notes -- when she was terminated
22 that she said so you think I'm a racist, and we said
23 absolutely not, that's not at all what this is
24 about, and that's, you know, clearly in my notes.

35 (Pages 137 to 140)

Appendix 1074

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1 Q. Are you sure that wasn't a gratuitous
2 comment on your part; I don't want you to think
3 you're a racist?
4 MS. DEON: Objection. You can
5 answer.
6 BY MR. SCHWARTZ:
7 Q. I'm a racist?
8 A. No. I don't make gratuitous comments, I --
9 Q. Oh, you don't?
10 A. -- just speak facts. No.
11 Q. Oh, you just speak facts, correct?
12 MS. DEON: Objection. You can
13 answer.
14 MR. SCHWARTZ: No. He just said
15 he just spoke fact, but you also don't
16 remember a lot, right?
17 MS. DEON: Objection. Objection.
18 MR. SCHWARTZ: All right. The
19 testimony speaks for itself.
20 BY MR. SCHWARTZ:
21 Q. All right. Where on RJ-1 is there a logo
22 of Waverly Heights?
23 A. There is not a logo of Waverly Heights on
24 RJ-1.

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1 Q. Okay. Where is there a trademark of
2 Waverly Heights?
3 A. There is not a trademark on that.
4 Q. Where does it make any reference to Waverly
5 Heights that is detectable from just reading this
6 Tweet?
7 A. So where it came from is exactly where --
8 how whoever the anonymous letter writer, whoever
9 that is, they found it the same way, because the VP
10 of Human Resources in a comp outside of Philly was
11 on her Twitter, which was linked or followed by --
12 she followed Waverly Heights and so that's where the
13 connection was made. It's in her name, and a quick
14 Google search, like I said before, of her name and
15 VP of HR in Philadelphia, you know, would easily
16 turn up the position at Waverly Heights.
17 Q. How many VPs of HR can be found in
18 companies outside of Philly? Do you know how many
19 people would fit that description?
20 A. Well, I would add in a company outside of
21 Philly by the name of Kathy Jungclaus --
22 Q. That's not my question.
23 A. -- only one.
24 Q. Just look at the text. How many VPs of HR

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1 are there in companies outside of Philly?
2 A. Yeah, I'm sure there are plenty but, again,
3 by the name of K --
4 Q. I understand.
5 MS. DEON: Excuse me. Don't cut
6 him off.
7 THE WITNESS: -- by the name of
8 Kathy Jungclaus with a Twitter handle
9 @KMJungclaus, I think there's one.
10 BY MR. SCHWARTZ:
11 Q. Do you consider this RJ-1 as being linked
12 to Waverly Heights' internal or external website?
13 A. It was linked to our Twitter account as a
14 follower.
15 Q. No. Is it linked to your internal or
16 external website?
17 A. There -- on our main website is our Twitter
18 connection.
19 Q. Is it linked? I'm reading page 0855,
20 Waverly-0855: Employees are not permitted to link
21 from a personal blog or social networking site to
22 Waverly Heights' internal or external website.
23 A. So --
24 Q. Did she do that? Did she link to their

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1 internal or --
2 A. Indirectly, yes.
3 MS. DEON: Let him finish.
4 THE WITNESS: I'm sorry.
5 MS. DEON: He asked a question
6 and then he didn't let you answer and then
7 he asked another question.
8 THE WITNESS: Okay.
9 MS. DEON: So let him ask the
10 question.
11 BY MR. SCHWARTZ:
12 Q. Did she link to Waverly Heights' internal
13 or external website, to either one?
14 A. First can I ask you what page you're on?
15 Q. Yes. Waverly-0855, second full paragraph.
16 A. And then the answer to that is yes, when
17 you -- if you went to our website, clicked on our
18 Twitter feed or whatever, the icon, you get to our
19 Twitter account and then you click on our followers
20 and so, yes, it is -- it is linked from that
21 perspective.
22 Q. If I click on, as I have, Waverly Heights'
23 external website, does Kathy Jungclaus come up?
24 A. No.

36 (Pages 141 to 144)

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1 Q. If I clicked Waverly Heights' internal
 2 website, does Kathy Jungclaus' name come up?
 3 A. You said if you click on our internal
 4 website?
 5 Q. That's your language. Do you have an
 6 internal website?
 7 A. Well, we did not at that time; we have
 8 something that you could construe as an internal
 9 website now, but not back then.
 10 Q. Then the next paragraph: In a blog or any
 11 other communication you identify yourself as an
 12 employee of Waverly Heights, please understand that
 13 you may be viewed by some as a spokesman for Waverly
 14 Heights.
 15 Where does it indicate on RJ-1 that Kathy
 16 Jungclaus is a spokesman for Waverly Heights? Is
 17 there any language there? Is there any language on
 18 that form?
 19 A. That says she's a spokeswoman for Waverly
 20 Heights?
 21 Q. Yes.
 22 A. No.
 23 MR. SCHWARTZ: Let's mark this as
 24 the next exhibit (indicating).

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1 kindly admit that e-mail authored by former Board
 2 Chairman, Charles Soltis, e-mail that was critical
 3 of Barack Obama was at one time on Waverly's e-mail
 4 system, and it's checked denied; is that true?
 5 A. Well, you can read the response below.
 6 Q. Yeah. Well, is it true that Mr. Soltis'
 7 e-mails that were critical of Barack Obama were on
 8 the Waverly e-mail system; yes or no?
 9 A. Well, I didn't read all the content of
 10 Chuck Soltis' e-mails, but he copied some employees
 11 from time to time on his e-mails who, I think -- I'm
 12 not sure how he decided, but who I believe he felt
 13 were politically like-minded.
 14 Q. And it showed up on the Waverly e-mail
 15 system, right?
 16 A. Well, it came through the -- you know, it
 17 said Waverly Heights e-mail addresses for a couple
 18 of people.
 19 Q. And you say or someone said -- you say it's
 20 denied that the e-mails were racist, correct?
 21 A. I don't believe that he would send
 22 something that was racist but, again, I didn't
 23 review every e-mail that he sent because I don't
 24 have -- I don't take the time to review e-mails that

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1 (At this time, a document was
 2 marked for identification as TG-5.)
 3 BY MR. SCHWARTZ:
 4 Q. Can you tell me what this is?
 5 A. This is the Defendant Waverly Heights,
 6 Ltd.'s Response to Plaintiff's Request for
 7 Admissions.
 8 Q. Okay. Did you have any role in formulating
 9 the responses to this?
 10 A. Yes.
 11 Q. Anyone else have a role in formulating the
 12 response other than your lawyer?
 13 A. No. I don't believe so.
 14 Q. There's no verification on this, is there,
 15 by you? Do you know what a verification is?
 16 A. I do.
 17 Q. Is there one on this?
 18 A. Not in what you handed out. No.
 19 Q. Okay. It's just signed on page 4, is it
 20 not, by Eastburn & Gray, correct?
 21 A. Correct.
 22 Q. And it's dated April 18th, 2018, correct?
 23 A. Yes.
 24 Q. Okay. Let's go through some of these. I,

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1 I consider non-business --
 2 Q. And your mother never --
 3 A. -- related.
 4 Q. -- discussed them with you?
 5 A. No.
 6 MS. DEON: Excuse me, you gotta
 7 stop cutting him off she's going to like
 8 inflame.
 9 THE COURT REPORTER: Restate your
 10 question.
 11 BY MR. SCHWARTZ:
 12 Q. Did you discuss Mr. Soltis' e-mails with
 13 your mother?
 14 A. No.
 15 Q. 3, kindly admit that prior to her dismissal
 16 no meeting was had of the full Human Resource
 17 Committee of the Board of Trustees to discuss and/or
 18 vote on the termination of the Plaintiff for
 19 violating the Waverly's Social Media Policy, and you
 20 have admitted and denied, correct?
 21 A. That is correct.
 22 Q. So what's the answer?
 23 MS. DEON: Objection. The answer
 24 speaks for itself. The answer is there in

37 (Pages 145 to 148)

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1 writing. What do you mean what is the
2 answer? It's right there.
3 MR. SCHWARTZ: I've never had one
4 that was admitted and denied.
5 MS. DEON: Well, portions of it
6 are admitted and portions are denied, so I
7 can't fully admit or fully deny it.
8 MR. SCHWARTZ: Okay. Thanks.
9 Oh, so you admitted or denied it, correct?
10 That's your testimony? Okay. Fine.
11 MS. DEON: I'm not under oath,
12 I'm not testifying, Mr. Schwartz; you're
13 fully aware of that.
14 MR. SCHWARTZ: You volunteered
15 it.
16 BY MR. SCHWARTZ:
17 Q. And then the same with 4 you have checked
18 there admitted and denied, correct?
19 A. Yes.
20 Q. Same with 5, correct; you have admitted and
21 denied?
22 A. Yes.
23 Q. 7, kindly admit that Kathleen Jungclaus was
24 sexually harassed in the workplace in the presence

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1 MR. SCHWARTZ: All right.
2 Let me show you the next exhibit
3 (indicating).
4 (At this time, a document was
5 marked for identification as TG-6.)
6 MR. SCHWARTZ: And let me show
7 you Exhibit-7 (indicating).
8 (At this time, a document was
9 marked for identification as TG-7.)
10 BY MR. SCHWARTZ:
11 Q. I want to focus on your Answer, which I
12 believe is Exhibit-7, but I want to give you the
13 benefit of having Exhibit-6, which is the Amended
14 Complaint so you can match them up, okay? Have you
15 seen these two documents?
16 A. Yes.
17 Q. And you'll note at the top -- do you know
18 what that blue lettering is?
19 A. It appears to be a case number, a document
20 number, date of filing, and page numbers.
21 Q. Let's look at page 3 of the Answer.
22 A. Is that TG-7?
23 Q. Yes, sir. On page 3, if you look at the
24 second full sentence it says: It is admitted that

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1 of Defendant Garvin and Robert Supper and no action
2 was taken, and you marked denied, correct?
3 A. That is correct.
4 Q. So is it your testimony that at no time
5 this Plaintiff ever contended that she was sexually
6 harassed?
7 A. That's correct. She never made a complaint
8 of sexual harassment.
9 Q. So was she making up the testimony that you
10 sat through yesterday and today?
11 A. I think she has manipulated the facts that
12 she's someone that hugs a lot of people and I think
13 she's turning it into sexual harassment based on
14 hugs or whatever, because I can't think of anything
15 that was said or done to her, certainly nothing she
16 ever complained about that was sexual harassment.
17 Q. So would it be your testimony that she
18 comes on to people physically?
19 A. Definitely not.
20 MR. SCHWARTZ: I think it's clear
21 that we're not going to finish today; do
22 you want to quit now?
23 MS. DEON: No. I'd like you to
24 continue.

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1 Plaintiff was responsible for employee training, but
2 it is denied that there was any quantifiable
3 correlation between that aspect of her job and
4 saving Waverly money. Is that correct? Is that
5 what it says?
6 A. That's what it says.
7 Q. Did you have input into this --
8 A. Yes.
9 Q. -- response? And if you want to take a
10 look at paragraph 13 of the Amended Complaint that
11 would have the assertion that we made, okay? Do you
12 want to take a look at that for a minute?
13 A. (At this time, the witness complies with
14 request.)
15 Okay.
16 Q. How can you substantiate the statement that
17 you admit that she was responsible for employee
18 training, but deny that there was any quantifiable
19 correlation between that aspect of her job and
20 saving Waverly money?
21 A. Yeah. Well, Waverly Heights takes really
22 good care of their employees, so our employees --
23 and that has to do with a lot of people, not just
24 the Vice President of Human Resources, so having low

38 (Pages 149 to 152)

Appendix 1077

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1 turnover and engaged employees I think is as much a
 2 product of the way that they're treated there by
 3 everyone; the residents, you know, their co-workers,
 4 everybody in supervision and management, so...
 5 Q. But doesn't proper employee training save
 6 money as far as Waverly's concerned?
 7 A. Well, you hope that with proper training
 8 that's a component -- you know, one small component
 9 of the bigger picture of reducing -- of keeping
 10 turnover low.
 11 Q. How many employees would be trained by
 12 Plaintiff or her department?
 13 A. Yeah. I think her department did a lot of
 14 the training along with her on the phish training,
 15 so all the employees would go through it over the
 16 course of the year.
 17 Q. But you couldn't -- you don't think that
 18 there is intended savings, correct?
 19 A. It's just part of the job.
 20 Q. Then you say by way of further answer,
 21 Waverly would hope that its Vice President of Human
 22 Resources would treat people fairly.
 23 Other than the -- what transpired as a
 24 result of RJ-1, when was my client treating people

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1 just say that?
 2 A. What's it say in 14 that you're asking me
 3 about?
 4 Q. All right. Then if you go down to where it
 5 says further; it's 1, 2, 3, 4 -- 5th line down at
 6 the end. Further, if Plaintiff is referencing the
 7 time she advised Mr. Garvin that the female CFO was
 8 allegedly harassing her, Mr. Garvin promptly
 9 commenced an investigation of the matter. Plaintiff
 10 made clear that although she consulted an attorney,
 11 she requested that Mr. Garvin take no action.
 12 Plaintiff also stated that she would never sue
 13 Waverly. Is that language your language?
 14 A. Part of it is, and you have my notes on the
 15 outcome of that meeting.
 16 Q. Okay. So my client did complain to you
 17 about being harassed; did she not?
 18 A. Your client complained about being
 19 harassed, but not sexually. She complained about
 20 her being mistreated by the female CFO, Ann Rodgers,
 21 who, apparently, the two of them had a long, long
 22 history of, you know, mistrust and dislike for one
 23 another.
 24 Q. Do you remember anything specific about her

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1 unfairly?
 2 MS. DEON: Well, the text of it
 3 says justified concerns about continued
 4 ability.
 5 THE WITNESS: Going forward.
 6 BY MR. SCHWARTZ:
 7 Q. Okay. But there's the statement: Waverly
 8 would hope that its Vice President of Human
 9 Resources would treat people fairly. I guess my
 10 question is, other than what you've testified about
 11 the blog and your allegations in conjunction with
 12 that, when did she ever not treat people fairly?
 13 A. I believe that's just a statement.
 14 Q. Oh, okay. You don't think it has a
 15 negative connotation?
 16 A. I believe it has a statement that we would
 17 hope that the Vice President of Human Resources
 18 would treat people fairly.
 19 Q. Did you put that language in the Answer?
 20 A. It's a combination of the -- my attorney
 21 and me.
 22 Q. Okay. And then in 14, didn't you just
 23 testify that my client is a huggy sort of person and
 24 that there was no sexual harassment? Didn't you

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1 complaints about Ms. Rodgers that caused you to
 2 promptly commence an investigation?
 3 A. Yeah. I'm trying to -- my notes would be
 4 the best frame of reference on that, but she had
 5 made comments -- Kathy had made comments that she
 6 couldn't work with her anymore, the way she was
 7 treating -- mistreating her and what have you, and
 8 that she had consulted an attorney, and so just like
 9 anything else when I -- you know, when I heard that
 10 I felt I need to take this seriously. I really
 11 wanted the three of us to sit down and go through it
 12 so that, you know, there could be follow-up, and
 13 multiple times Kathy asked me not to because, again,
 14 her concern was that it had been going on for years.
 15 Apparently, I don't know if the previous CEO ever
 16 addressed it, but I was certainly -- did and was
 17 ready, willing, and able to.
 18 Q. Could she have -- could the attorney she
 19 have consulted been Waverly's labor attorney at the
 20 time?
 21 A. She didn't tell me who it was, but she
 22 knows that was the -- you know, when she said that,
 23 I took that very seriously; I wanted to make sure
 24 that we were handling this correctly, like I do with

39 (Pages 153 to 156)

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1 everything else.
 2 Q. So if someone says that they have consulted
 3 an attorney that -- that puts off signals that you
 4 relate to, right?
 5 A. No. More the words harassment are the --
 6 you know, the trigger points for a higher level of
 7 concern. Anybody that says anything about
 8 harassment or discrimination to me is going to get
 9 a -- you know, a thorough professional response.
 10 Q. Okay. What did you take her saying that
 11 she had consulted an attorney to mean?
 12 A. How to deal with what she felt was Ann
 13 Rodgers' treatment of her.
 14 Q. Did she indicate to you that she was going
 15 to sue Waverly over this?
 16 A. No. In fact, she made the comment that she
 17 would never sue Waverly.
 18 Q. Okay. What about Mr. Hendrickson, who's
 19 he?
 20 A. He was someone that they had been working
 21 with for years. I'm not sure exactly how he even
 22 came to be at Waverly, but he was trying to sell us
 23 on like additional disability insurance or
 24 something; I'm not -- apparently, he worked with

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1 are trying to get to you and -- you know.
 2 Q. You're kidding?
 3 A. Yeah. Trying to get our business is a, you
 4 know, pretty normal thing.
 5 Q. Any comments made to you by my client about
 6 overt sexual moves or physical moves that he made on
 7 her?
 8 A. No.
 9 Q. And you never observed anything?
 10 A. No. Like I said, just the normal, you
 11 know, greeting; they clearly new each other.
 12 Q. Let's go to paragraph 18 on page 4.
 13 A. (At this time, the witness complies with
 14 request.)
 15 Q. And you might want to look at paragraph 18
 16 on page 6 and 7 of the Amended Complaint.
 17 A. (At this time, the witness complies with
 18 request.)
 19 Q. Are you ready?
 20 A. Sure.
 21 Q. Okay. In terms of the Answer, third
 22 sentence down, middle of line three: It is denied
 23 that during their meeting that Plaintiff was
 24 dumbfounded. It is admitted that she appeared

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1 them prior to my coming there, so he was constantly
 2 trying to sell us something; that's who he was.
 3 Q. Was he an outside consultant to Waverly?
 4 A. You know, in retrospect I wouldn't call him
 5 a consultant, I'd call him a salesperson. I just --
 6 I don't even -- the name of the company was like
 7 Hendrickson-something.
 8 Q. Fair enough.
 9 Was he pitching the company or was he
 10 pitching you or both?
 11 A. So it started him pitching the company; he
 12 would have loved to have gotten something broader
 13 for the company as a whole, and then he tried to
 14 sell me on more -- I think -- it was either -- I
 15 think it was disability, so that's what he tried to
 16 pitch to me.
 17 Q. Did he pitch you first, personally, and
 18 then Waverly?
 19 A. Not that I recall.
 20 Q. No?
 21 A. No. It was someone that they had been
 22 engaged with at Waverly, it's just I come in and he
 23 wants to continue whatever their relationship was
 24 and, you know, when you're a new CEO lots of people

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1 distraught. So would it be your testimony that she
 2 wasn't surprised about what was happening?
 3 A. I think she was surprised that it had come
 4 to light, for sure, because she asked the question
 5 am I going to lose my job; that was -- I mean that
 6 whole meeting was probably two minutes in total
 7 duration.
 8 Q. Did she say to you oh, my -- or words to
 9 the effect oh, my, it came to light; you discovered
 10 it? Did she say that?
 11 A. Not that I recall, I just remember that
 12 quote that we put in the Answer, which is am I going
 13 to lose my job.
 14 Q. Yeah, well -- but I'm focussing on the
 15 words it's denied that during the 16 Plaintiff was dumbfounded. What's
 16 your
 17 understanding of what that term means?
 18 A. I'd have to look at a Webster definition of
 19 dumbfounded but, you know, surprised.
 20 Q. Shocked maybe?
 21 A. Surprised is my word.
 22 Q. So she didn't seem to be surprised?
 23 A. She seemed to be surprised that it had come
 24 to light, sure. I mean I handed her an envelope

40 (Pages 157 to 160)

Appendix 1079

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1 with a three-page anonymous letter about -- well,
 2 you've read it.
 3 Q. Okay. And then she claims, does she not,
 4 in the Complaint that you, quote, characterized the
 5 situation as a mere nuisance. Did you ever say
 6 that?
 7 A. No.
 8 Q. Are you sure?
 9 A. Positive.
 10 Q. Did you say in fact that, quote, you could
 11 not give her any promise as to whether she would be
 12 fired? Did you say that to her?
 13 A. It would be language like that. Again, it
 14 was a two-minute conversation; the issue had just
 15 come to light maybe ten minutes before, we had a
 16 very quick meeting and she went up and took the --
 17 took the Tweet down.
 18 Q. Okay. So is it possible that you said
 19 don't worry about it; you won't be fired?
 20 MS. DEON: Objection. You --
 21 THE WITNESS: No.
 22 MS. DEON: -- can answer.
 23 THE WITNESS: No.
 24 BY MR. SCHWARTZ:

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1 Q. And is it possible that you told her not to
 2 be worried?
 3 MS. DEON: Objection. You can
 4 answer.
 5 THE WITNESS: No. It's not.
 6 BY MR. SCHWARTZ:
 7 Q. And you would deny that you ever
 8 characterized the situation as a mere nuisance?
 9 A. I would deny that wholeheartedly because in
 10 my role, again, as the CEO, when you receive
 11 something like this, me burying it and not doing any
 12 type of follow-up on it would be extremely
 13 irresponsible of me. So I think that makes it clear
 14 that the -- common sense would prevail that I
 15 couldn't just ignore the anonymous letter and its
 16 contents.
 17 Q. Okay. Let's go to 19. The Amended
 18 Complaint says directly after that initial meeting
 19 Plaintiff deleted the posting which had attracted
 20 neither comment, sharing or responses. Is that what
 21 it says?
 22 A. Show me where you are again.
 23 Q. Paragraph 19 on page 7 and paragraph 19 on
 24 the Answers, page 4. Do you see those?

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1 A. I do.
 2 Q. All right. You admit that she immediately
 3 deleted the Tweet, correct?
 4 A. That is correct.
 5 Q. Did you notice, from your investigation,
 6 whether the Tweet had any comments on it or comments
 7 to it; responses to it?
 8 A. I don't recall seeing any.
 9 Q. Okay. And you say Waverly is without
 10 knowledge or information sufficient to form a belief
 11 as to whether there were any comments, sharing or
 12 responses and such allegations are denied. Is that
 13 correct? Is that what the Answer says?
 14 A. That is correct.
 15 Q. However, from your own investigation you
 16 couldn't find any comments, sharing or responses,
 17 right?
 18 MS. DEON: Objection.
 19 Foundation.
 20 BY MR. SCHWARTZ:
 21 Q. At the time that you did your investigation
 22 you just testified that you didn't see any comments,
 23 sharing or responses, so that's all I'm asking?
 24 A. What I received was the three-page

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1 anonymous letter.
 2 Q. Right. But from your examination of the
 3 Tweet, did you observe any comments, sharing or
 4 responses?
 5 A. On the Twitter feed itself?
 6 Q. Yes.
 7 A. I don't recall that.
 8 Q. 21, Defendant -- let me read from the
 9 Complaint. Defendant Garvin told her that this
 10 meeting was about the anonymous letter and the
 11 Twitter posting. He stated he was very upset by it.
 12 Okay. You say that you didn't state that
 13 you were upset; is that correct?
 14 A. That is correct.
 15 Q. Okay. And further you said that -- in your
 16 Answer -- at no time did Mr. Garvin state that the
 17 Human Resources Committee and the full Board of
 18 Trustees had voted unanimously to terminate her
 19 employment based upon a violation of the Defendant's
 20 Social Media Policy. So you didn't tell her that?
 21 A. No.
 22 Q. Okay. Did Ms. Jungclaus ever complain to
 23 you about Mr. Soltis' e-mail?
 24 A. No.

41 (Pages 161 to 164)

Appendix 1080

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1 Q. Do you ever remember making the comment
2 he's on the Board?
3 A. No. The -- any discussion about the Soltis
4 e-mails were just saying I got the -- you know, an
5 e-mail from -- you know, from Soltis; it was never a
6 complaint and never a concern, it was more they
7 would -- she would tend to joke about a lot of
8 things, and so that's a lot of what's been
9 manipulated here.
10 Q. What did she manipulate?
11 A. The facts.
12 Q. The whole facts of the whole Amended
13 Complaint is manipulated; is that your testimony?
14 A. A very large portion of it.
15 Q. All right. What portion? I've heard that
16 before with respect to my letter, so what portion?
17 A. Well, do you have a specific question?
18 Q. You said that she manipulated the facts in
19 the Complaint, what was manipulated?
20 MS. DEON: Well, I guess he can
21 go through the Answer.
22 THE WITNESS: Yes. Let's just go
23 through it one-by-one; I'm happy to do
24 that.

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1 MS. DEON: I mean he can go
2 through each of the spots where we deny it
3 and say that we're not in agreement with
4 the factual assertions; if you want him to
5 do that, we'll do that.
6 MR. SCHWARTZ: All right.
7 THE WITNESS: I'd love to do
8 that.
9 MR. SCHWARTZ: Your Answer speaks
10 for itself. That's fine.
11 BY MR. SCHWARTZ:
12 Q. And is it your testimony that you never
13 told Plaintiff that you didn't want her to think
14 that you thought she was a racist; did you ever say
15 that?
16 A. Where is that?
17 Q. Anywhere.
18 A. So --
19 Q. Did you ever say to her or anybody else I
20 don't want you to think that I think you're a
21 racist?
22 MS. DEON: Objection.
23 THE WITNESS: No. I --
24 MS. DEON: Asked and answered.

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1 THE WITNESS: Yeah.
2 BY MR. SCHWARTZ:
3 Q. What's the answer?
4 A. That, no, I have never said that. Where
5 that came up was she, in the termination meeting,
6 said so you think I'm a racist, and the answer by
7 Dick Bauer and I was that no, absolutely not.
8 Q. But doesn't the --
9 A. Nobody ever said that.
10 Q. -- but doesn't the anonymous letter
11 indicate that she was a racist?
12 A. I don't believe it does.
13 Q. And Dick Bauer was with you throughout this
14 entire meeting, correct, with her?
15 A. Which meeting?
16 MS. DEON: The termination
17 meeting?
18 MR. SCHWARTZ: The termination
19 meeting.
20 THE WITNESS: Yes.
21 BY MR. SCHWARTZ:
22 Q. Did my client tell you that she was
23 concerned about the affect this would have on her
24 in-laws who were Waverly residents; did she tell you

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1 that?
2 A. She did.
3 Q. Do you remember what it is she -- do you
4 remember her words?
5 A. I don't remember it exactly, but we gave
6 her full access and authorization to, you know,
7 visit them whenever she wanted.
8 Q. All right. I do remember one letter from
9 Ms. Deon complaining about her visitation. Did you
10 talk to Ms. Deon and is that what resulted in a
11 letter being issued?
12 A. Yeah, because she went into a restricted
13 area. Specifically she was there for dinner one
14 night and Kathy went into the kitchen -- again, as
15 seen on video -- hugging our staff in there and --
16 you know, in a restricted area where she could have
17 gotten hurt, been injured was, again, interacting
18 with our staff in that way, and it was just very
19 inappropriate. She could be -- we told her she
20 could be there in public areas and that was never
21 restricted at all, but she went beyond that with
22 what I just said, and she also was pulling staff
23 members aside and taking them away from doing their
24 duties and -- which was interrupting our normal

42 (Pages 165 to 168)

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1 business operations, so...

2 Q. How do you know that?

3 A. Because we have it on video camera.

4 Q. Will you provide the tape, please? We'd

5 like to see it.

6 A. (Witness nods head.)

7 Q. Thank you. Is that a yes?

8 A. Yes. Sure.

9 Q. Did my client tell you that she was worried

10 about her reputation?

11 A. I don't recall that.

12 Q. Did you reassure her that you would be very

13 careful about what was said?

14 MS. DEON: Is this during the

15 termination meeting?

16 MR. SCHWARTZ: Yes.

17 THE WITNESS: You know, my notes

18 speak for themselves on what was said in

19 that meeting.

20 BY MR. SCHWARTZ:

21 Q. Why is it that you don't remember --

22 A. Well, I remember --

23 Q. -- and keep referring to your notes?

24 A. Well, you're asking questions that may or

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1 may not be in there, so I didn't memorize the entire

2 page of notes, but you have that, so...

3 Q. Did you editorialize at all with respect to

4 those notes?

5 A. No. They're very factual. They were done

6 right away with the events exactly as I remembered

7 them without conferring with anyone.

8 Q. As is your practice, right?

9 A. On significant issues, yes.

10 Q. Okay. Did you promise that you would say

11 that she had simply resigned and wouldn't be back?

12 A. Where are you referring?

13 Q. Paragraph 26.

14 A. And whereabouts?

15 MS. DEON: In the Complaint, if

16 you go to 26.

17 Mr. Schwartz, did you ask: He

18 reassured her that he would be very careful

19 about what was said? Third line up --

20 MR. SCHWARTZ: Correct.

21 MS. DEON: -- within paragraph

22 26; was that your question?

23 MR. SCHWARTZ: Yes.

24 BY MR. SCHWARTZ:

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1 Q. Did you do that?

2 A. Let me finish reading. I'm on 26. Sorry,

3 I was reading the first line.

4 MS. DEON: So just if you read

5 26, but Mr. Schwartz was asking you about

6 the fourth line up, there's a sentence --

7 THE WITNESS: That he reassured

8 her that he would --

9 MS. DEON: Yes. He's asking if

10 you did that.

11 THE WITNESS: Okay. Can you

12 repeat your question?

13 BY MR. SCHWARTZ:

14 Q. Yes. Did you reassure her that you would

15 be very careful about what was said?

16 A. So I don't recall the exact language that I

17 used but, you know, what we answered in the -- you

18 know, the Answer to the Complaint, you know, stands

19 that --

20 Q. Well, you say at no time did Plaintiff

21 express any concern about her reputation in the

22 community nor did she say she was worried about her

23 reputation.

24 A. Yeah. We said, in very generic terms, Mr.

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1 Garvin never publicized the circumstances underlying

2 Plaintiff's termination and announced her departure

3 in very generic terms to the community stating that

4 simply she would no longer be employed at Waverly,

5 which is actually -- that's how we do it; we say,

6 you know, generic, neutral things and don't talk

7 about anything that would damage someone's

8 reputation.

9 Q. Oh, okay. So your testimony is you've

10 never damaged anyone's reputation let alone Ms.

11 Jungclaus', correct?

12 A. I personally haven't done anything to

13 damage her reputation. I think when people are held

14 accountable for things that they do wrong and can't

15 accept that, that that damages their own reputation.

16 Q. Okay. But you did or you didn't reassure

17 her that you would be careful about what you said?

18 Did you or didn't you?

19 A. I mean I don't recall reassuring her, but I

20 am careful because that's my job.

21 Q. Now, do you dispute that Plaintiff was

22 escorted out by two individuals in plain view of the

23 Waverly staff and residents?

24 A. Yeah. So the way that it actually happened

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1 and the way that it was arranged was that -- and she
 2 was told, when she was terminated, that she could go
 3 directly up to her office, without anybody with her,
 4 and that Mark and Brian would be up there to help
 5 her get her things together and pack her office and
 6 then take her down -- help her carry the boxes down
 7 to the car, which she doesn't go by -- it's a very
 8 non-public area, so she was not paraded and escorted
 9 through. You know, and, again, the walk from her
 10 office to her car is about maybe 40 feet down a
 11 stairwell and out the front of our Manor House.
 12 She, upon leaving the office, however, went into
 13 Janet Thompson's office, and I think Amy Blessing
 14 followed her in, and they had a whole discussion
 15 about what Kathy had done, and she admitted doing it
 16 and that she had made a mistake, a horrible mistake,
 17 and it went from there.
 18 Q. Okay. But was she, in fact, escorted out
 19 of the building? Were there people --
 20 A. Yeah.
 21 Q. -- accompanying her?
 22 A. Up from her office down to her car, which
 23 is standard practice.
 24 Q. And did people see that?

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1 A. I'm not aware of anybody seeing it. Again,
 2 the location of her office to her car is, you know,
 3 40, 50 feet. It goes by, I think, only one person's
 4 office and there's no other -- unless someone
 5 happened to be walking by, it would be -- it's a
 6 very -- it's an area that's not -- doesn't have a
 7 lot of traffic. We wanted -- our intention was to
 8 make it as easy on her as possible, and we did tell
 9 her that, and we had set it up that way.
 10 Q. But you just did say people do walk by that
 11 area, correct?
 12 A. Rarely. It's one of the less used areas of
 13 the -- you know, of the community.
 14 Q. Would you dispute her testimony that she
 15 said that others saw this?
 16 A. Oh, I don't know, because I didn't follow
 17 her all the way through.
 18 Q. Right.
 19 A. Like I said, we just let her go up on her
 20 own.
 21 Q. Okay. Paragraph 40 starts with the
 22 sentence, a plain reading of Defendant's Social
 23 Media Policy shows that there was no violation by
 24 Plaintiff, correct?

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1 A. You're just repeating what 40 says --
 2 Q. Yes.
 3 A. -- that you wrote?
 4 Q. What I wrote. Right.
 5 A. Yes.
 6 Q. Okay. And, again, there is the language
 7 that I talk about company owned assets, work-related
 8 blogging on the one hand and personal on the other.
 9 Your Answer is that the Social Media Policy
 10 speaks for itself. Is it your testimony that she
 11 did violate the Social Media Policy?
 12 A. So she did a couple of things. The Social
 13 Media Policy is really -- you're referring to the
 14 handbook, you should be referring to the actual
 15 Social Media Policy; so that, in conjunction with
 16 the conduct that is completely inappropriate for the
 17 Vice President of Human Resources to -- to have done
 18 related to in singling out a protected class,
 19 representing 100 percent of that protected class,
 20 having been polled, being tied to our social
 21 media -- or being tied to our Twitter account and --
 22 so those were the reasons that it all ended the way
 23 that it did.
 24 Q. That wasn't my question. Did she violate

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1 the Social Media Policy?
 2 A. Well, yes.
 3 Q. Okay. You heard Ray Jungclaus' testimony
 4 yesterday, didn't you?
 5 A. Yes.
 6 Q. And he explained what led to the Tweet,
 7 correct?
 8 A. He did.
 9 Q. Is there any part of his testimony that you
 10 take issue with as far as how the Tweet eventuated?
 11 A. I really don't know. I've been told
 12 different stories by your -- by Kathy on -- she did
 13 it, she didn't do; he did it, he didn't do it, so I
 14 really don't know what to believe.
 15 Q. Okay. Do you have any reason to disbelieve
 16 his testimony?
 17 A. Yes.
 18 Q. Specifically what? What don't you believe
 19 as far --
 20 A. Because --
 21 Q. -- as his rendition?
 22 A. -- his wife contradicted that and never
 23 said that in the couple of times that she had the
 24 opportunity to.

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1 Q. Okay. Well, what is it that she said that
 2 varied with what he -- varied with his testimony, as
 3 you recall it?
 4 A. So -- well, when we first met, when I
 5 brought it to her attention, she didn't deny doing
 6 it and went up and took it down.
 7 Q. Right.
 8 A. And then during the termination meeting she
 9 admitted to doing it only before denying it saying
 10 someone else did it, but not identifying the person,
 11 and then at the end admitting it and, you know,
 12 again, hugging us, apologizing profusely, leaving
 13 asking us to apologize to the Board so, yeah, I
 14 don't know what the truth is.
 15 Q. So you said that she said that somebody
 16 else did it; isn't that correct? Didn't her husband
 17 dictate to her what to put on her page?
 18 MS. DEON: Objection.
 19 BY MR. SCHWARTZ:
 20 Q. Isn't that what happened?
 21 MS. DEON: Objection. The first
 22 part of your question was didn't someone
 23 else do it.
 24 MR. SCHWARTZ: Right.

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1 new theory is not alleged in any Complaint filed in
 2 the above action nor in the voluminous letter from
 3 Plaintiff's Counsel reciting Plaintiff's version of
 4 the events underlying her separation from
 5 employment. Is that your language?
 6 A. It's a combination of my language with
 7 Counsel.
 8 Q. Didn't -- in her meeting prior to firing,
 9 didn't she basically say, hey, it's on my blog, I
 10 adopt it; didn't she take responsibility for it?
 11 A. No. She went up and removed it.
 12 Q. Well, you asked her to remove it, right?
 13 A. She asked am I going to be fired and then I
 14 said you need to go up and remove this right away,
 15 which she did; she didn't take immediate
 16 responsibility for it there, but she didn't deny it.
 17 Q. You were going to fire her anyway, right?
 18 MS. DEON: Objection.
 19 THE WITNESS: That wasn't --
 20 BY MR. SCHWARTZ:
 21 Q. Whether she took it down or not?
 22 MS. DEON: Objection. You can
 23 answer.
 24 BY MR. SCHWARTZ:

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1 BY MR. SCHWARTZ:
 2 Q. Didn't someone -- strike that part.
 3 Didn't her husband testify that he dictated
 4 the language --
 5 A. So in the --
 6 Q. -- yesterday?
 7 A. Yes. Her husband testified that he
 8 dictated the language.
 9 Q. Okay.
 10 A. And in the termination meeting, after
 11 admitting that she did it, she all the sudden said I
 12 didn't do it, somebody -- somebody hacked my Twitter
 13 and kind of totally right turned, so I guess the
 14 person that hacked her Twitter, I don't know who
 15 that is.
 16 Q. Okay. Could she have been pretty shook up
 17 when she said that?
 18 A. She could have been.
 19 Q. You say in paragraph 41, the third
 20 sentence: Then, remarkably when filing for
 21 unemployment compensation, Plaintiff claimed that
 22 her husband posted the subject Tweet, correct?
 23 A. That is correct.
 24 Q. Even more interesting is the fact that this

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1 Q. Correct?
 2 A. That decision wasn't made until almost a
 3 week later after the investigation was completed.
 4 Q. Did she ever disclaim responsibility for
 5 this being on her blog? By this I'm saying RJ-1.
 6 A. Do you mean did she ever deny --
 7 Q. That it was on her blog?
 8 A. -- that she was the author of it?
 9 Q. No. Did she ever deny; say that's not my
 10 blog? Did she ever say that?
 11 A. No. What she said was that -- I mean she
 12 said a lot of things, but not the least of which was
 13 that somebody hacked it, so you could kind of
 14 reference that she's saying she didn't do it, it's
 15 not hers, because she said somebody hacked her
 16 Twitter account.
 17 Q. Okay. Let's look at your response to
 18 paragraph 43. Read the Complaint and then read the
 19 response.
 20 A. (At this time, the witness complies with
 21 request.)
 22 Q. Do you see that?
 23 A. Uh-huh. Yes.
 24 Q. You say that you admitted that paragraph in

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1 part and denied it in part, correct?
 2 A. That is correct.
 3 Q. Now, the paragraph -- let me break it down.
 4 Waverly deliberately -- first sentence: In
 5 pertinent point of fact, Waverly deliberately
 6 discriminated against Plaintiff after disregarding
 7 blatantly offensive e-mail of other males
 8 circulating on and throughout Waverly's e-mail
 9 system. You knew about the offensive e-mails, did
 10 you not?
 11 A. I knew that he sent e-mails; I didn't know
 12 the content of all of his e-mails.
 13 Q. But you knew the content of some of it,
 14 right?
 15 A. You know, I never read through them. Like
 16 I said, when they come -- when his e-mails would
 17 come to me and they were that -- you know,
 18 whatever the --
 19 Q. Yeah. I'm sorry. Go ahead.
 20 A. -- so whatever the content was, if it
 21 wasn't business related would get immediately
 22 deleted by me. I don't have time to read a bunch of
 23 e-mails that don't pertain to work.
 24 Q. Weren't you concerned about what this Board

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1 BY MR. SCHWARTZ:
 2 Q. Did you look at them?
 3 MS. DEON: Objection. I'm
 4 objecting to it and asking him if he can
 5 answer.
 6 Now, I doubt you remember the
 7 question.
 8 THE WITNESS: You know, like I
 9 said, I didn't go through his e-mails from
 10 front to back; I'd see the gist of it and
 11 see that it was something non-work-related
 12 and delete it. That's the way I handled
 13 it.
 14 BY MR. SCHWARTZ:
 15 Q. Didn't you consider him at the time to be
 16 your boss?
 17 A. Well, he was the Chairman of the Board at
 18 the time.
 19 Q. He's your boss?
 20 A. So my boss is the entire Board of Trustees,
 21 but he's the person I deal with -- dealt with most
 22 directly.
 23 Q. And you felt you could just disregard what
 24 he had to say, right?

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1 member was circulating? Were you ever concerned
 2 about what he was circulating?
 3 A. Not having read the content and just seeing
 4 that it was generally just passing on other e-mails
 5 and other cartoons from newspapers and things like
 6 that, no, I -- you know, he's not an employee and I
 7 just would delete them.
 8 Q. You don't remember anything anti-Semitic?
 9 A. No. I don't.
 10 Q. You don't remember anything anti-Muslim?
 11 A. I do not.
 12 Q. You don't remember anything about a quote,
 13 Obama picked judge being sworn in on the Koran and
 14 he made fun of that? Do you remember that?
 15 A. I can't say that I do.
 16 Q. And do you know that in fact that that
 17 judge that he's talking about was a municipal court
 18 judge that was never appointed by Obama; do you know
 19 about that?
 20 A. I don't know anything about that.
 21 Q. And you don't know any -- you didn't look
 22 at any of the racial content of the cartoons?
 23 MS. DEON: Objection. You can
 24 answer if you --

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1 MS. DEON: Objection. Don't
 2 answer that.
 3 BY MR. SCHWARTZ:
 4 Q. Did you feel that you could disregard what
 5 one of the Board members had to say?
 6 MS. DEON: About any topic?
 7 MR. SCHWARTZ: About anything.
 8 MS. DEON: You can answer that;
 9 did you disregard things the Board members
 10 said to you?
 11 MR. SCHWARTZ: No. That's not
 12 the question.
 13 BY MR. SCHWARTZ:
 14 Q. Did you feel that you could disregard
 15 anything that Board members said to you?
 16 MS. DEON: Verbally said to him?
 17 MR. SCHWARTZ: Any way; verbally,
 18 text, e-mail, barometric pressure,
 19 lightning bolt.
 20 THE WITNESS: You know, I give
 21 Board members the professional courtesy,
 22 but I -- I do what's right for the
 23 organization.
 24 BY MR. SCHWARTZ:

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1 Q. And you didn't think it was right for the
2 organization to read his e-mails?
3 A. Again, I didn't have time to read all of
4 his e-mails let alone, you know, all the content. I
5 know you've seen the volumes of just forward --
6 forwarded e-mails; I don't have time for that,
7 that's not my -- I'm not a political person and I'm
8 not interested in that and so I would just delete
9 them.
10 Q. Would your media relations person have
11 concerns if she saw some of the ones that you did
12 see?
13 MS. DEON: Objection.
14 BY MR. SCHWARTZ:
15 Q. Do you know?
16 MS. DEON: Foundation.
17 BY MR. SCHWARTZ:
18 Q. Testified about?
19 MS. DEON: If you know.
20 MR. SCHWARTZ: If you know.
21 THE WITNESS: Yeah, I really
22 don't know.
23 BY MR. SCHWARTZ:
24 Q. You don't know.

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1 MR. SCHWARTZ: Uh-huh.
2 THE WITNESS: Not the ones that
3 I'm aware of.
4 BY MR. SCHWARTZ:
5 Q. No problem?
6 A. No.
7 Q. It wouldn't affect Waverly in the least,
8 right?
9 A. I'm not really sure.
10 Q. Do you think Jewish people would want to be
11 at Waverly if they saw those e-mails?
12 A. Again, I don't know what the content is
13 that you're referring to.
14 Q. Do you think my father-in-law, who you met,
15 who was at Waverly, would want to be there if he saw
16 what came from Mr. Soltis? Do you think he'd want
17 to be there? You met him.
18 MS. DEON: Objection.
19 BY MR. SCHWARTZ:
20 Q. He liberated the Nazi death camps; do you
21 think he'd want to be there?
22 MS. DEON: Objection.
23 BY MR. SCHWARTZ:
24 Q. Answer it.

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1 So you wouldn't have any concerns if all of
2 these e-mails went into the public domain, would
3 you? It didn't bother you, right?
4 MS. DEON: Objection to the
5 extent of e-mails that he saw and he's
6 aware of. He's testified that he only
7 recalls seeing samplings; he does not
8 recall every e-mail that was ever sent.
9 BY MR. SCHWARTZ:
10 Q. Have you reviewed the e-mails that you
11 produced?
12 A. Not all of them in detail.
13 Q. Okay. Well, the ones that you have
14 reviewed, that you can remember, would you have any
15 problem with that going into the public domain?
16 A. I think most of it, from what I recall in
17 the first set that we gave you, was from the public
18 domain but, again, I didn't -- I don't spend time on
19 that type of -- reading that type of information.
20 Q. But knowing the Board as you do, would they
21 have a problem if somebody outed those e-mails to
22 the public? Would they have a problem with that?
23 MS. DEON: Of the ones that he's
24 aware of?

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1 MS. DEON: Mr. Schwartz, do you
2 have a question?
3 MR. SCHWARTZ: Yeah. That's the
4 question.
5 MS. DEON: Well, he's not
6 answering that question, so --
7 MR. SCHWARTZ: Well --
8 MS. DEON: -- if you'd like to
9 ask him -- and don't overtalk me. Let me
10 state my objection.
11 MR. SCHWARTZ: Then you ask the
12 question. Why don't you go ahead, Grace,
13 you can ask it. Do you have a question for
14 him?
15 MS. DEON: Mr. Schwartz, stop
16 playing your unprofessional games. I know
17 it's late in the day and --
18 MR. SCHWARTZ: Professional is
19 having a witness sit here --
20 MS. DEON: Mr. Schwartz --
21 MR. SCHWARTZ: -- who's going to
22 be testifying? You said it. I want to
23 renew my objection to Mr. Bauer here; he's
24 going to be testifying, and I'm quite sure

47 (Pages 185 to 188)

THOMAS P. GARVIN

Page 189	Page 191
<p>1 he'll be colluding with you and Mr. Garvin</p> <p>2 as far as how to corroborate word-for-word</p> <p>3 what Mr. Garvin said, and that's why --</p> <p>4 MS. DEON: Mr. Schwartz --</p> <p>5 MR. SCHWARTZ: -- I have a</p> <p>6 continuing objection to his being here.</p> <p>7 BY MR. SCHWARTZ:</p> <p>8 Q. Okay. So you would have no problem with</p> <p>9 any of those e-mails being put in the public domain,</p> <p>10 right?</p> <p>11 MS. DEON: Asked and answered.</p> <p>12 Objection.</p> <p>13 BY MR. SCHWARTZ:</p> <p>14 Q. What's the answer? What's the answer?</p> <p>15 Just repeat it.</p> <p>16 MS. DEON: Objection. Of the</p> <p>17 e-mails that Mr. Garvin said he recalls, he</p> <p>18 has already testified he would not have a</p> <p>19 concern; they were political in nature, and</p> <p>20 then you went on a rant, so where are we</p> <p>21 now?</p> <p>22 MR. SCHWARTZ: Okay.</p> <p>23 BY MR. SCHWARTZ:</p> <p>24 Q. Ms. Jungclaus' Tweet was political in</p>	<p>1 Q. Amy Blessing.</p> <p>2 A. Did she refer to Waverly as the good ole</p> <p>3 boys network? No.</p> <p>4 Q. Never?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Does the Board handbook provide for any</p> <p>7 sanctions to be taken against offending Board</p> <p>8 members?</p> <p>9 A. There's not a Board handbook, there's a</p> <p>10 Board Policy Manual, and I don't know that it</p> <p>11 addresses sanctions unless there's things like</p> <p>12 attendance issues at meetings.</p> <p>13 Q. So other than attendance issues, there's</p> <p>14 not a code of conduct for how Board members should</p> <p>15 behave?</p> <p>16 A. You know, I'd have to review the documents;</p> <p>17 there's quite a few Board documents.</p> <p>18 Q. I'd like to review them, too, if you can</p> <p>19 provide them.</p> <p>20 In any event, the Board -- to your</p> <p>21 knowledge, the Board never sanctioned Mr. Soltis for</p> <p>22 his e-mails; is that correct?</p> <p>23 MS. DEON: Objection. You can</p> <p>24 answer the question.</p>
Page 190	Page 192
<p>1 nature, wasn't it? Was it political? Look at this.</p> <p>2 Is this political in nature (indicating)?</p> <p>3 A. Well, certainly. It says @realDonaldTrump,</p> <p>4 I am the VP of HR in a company outside of</p> <p>5 Philadelphia; an informal survey of our employees</p> <p>6 shows 100 percent AA, African American, employees</p> <p>7 voting Trump.</p> <p>8 Q. Does that involve politics?</p> <p>9 A. It seems to, yes.</p> <p>10 Q. So this one you paid attention to, right?</p> <p>11 A. She's an employee.</p> <p>12 Q. Board members you didn't pay attention to,</p> <p>13 right?</p> <p>14 A. Again, I don't see the -- my responsibility</p> <p>15 are the employees down, not to manage the Board.</p> <p>16 Q. And it's not your responsibility to suggest</p> <p>17 to the Board what would be in the entity's best</p> <p>18 interest? You don't have a fiduciary</p> <p>19 responsibility?</p> <p>20 A. Well, of course, I do for the fiduciary</p> <p>21 responsibility.</p> <p>22 Q. Did your assistant ever refer to Waverly as</p> <p>23 the good ole boy network? That's in 43.</p> <p>24 A. My assistant?</p>	<p>1 THE WITNESS: Yeah. Not to my</p> <p>2 knowledge.</p> <p>3 BY MR. SCHWARTZ:</p> <p>4 Q. This is touching on by -- it's touched on</p> <p>5 in 47 on page 13 of the Amended Complaint and page 9</p> <p>6 of the Answer, and what it touches on is a question</p> <p>7 of compensation being -- compensation ratio being</p> <p>8 determined with the assistance of the Human</p> <p>9 Resources Compensation Consultant, right?</p> <p>10 A. Correct.</p> <p>11 Q. What's a compensation ratio; what is that?</p> <p>12 A. It's a measure of where someone's salary is</p> <p>13 compared to what is a determined market value by a</p> <p>14 third-party compensation consultant.</p> <p>15 Q. Okay. Does that rule the day, the</p> <p>16 compensation -- I mean are those ratios ever changed</p> <p>17 or do you have any discretion?</p> <p>18 A. So the way that it works is --</p> <p>19 Q. Please.</p> <p>20 A. -- the market values can move every year</p> <p>21 based on the consultant's recommendations.</p> <p>22 Q. Right.</p> <p>23 A. So this year it may be X and maybe that</p> <p>24 whole chart goes up by two percent. So the market</p>

THOMAS P. GARVIN

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1 values change based on when the charts change and
 2 based on the person's percent of increase that they
 3 receive.
 4 Q. Right. So do you have discretion when it
 5 comes to increasing pay?
 6 A. It's limited discretion. We have a chart,
 7 it's called a pay increase guide chart that we try
 8 to follow as a guideline. I do have discretion
 9 beyond that because, you know, oftentimes I'll --
 10 I've advocated for larger increases and gone off of
 11 the chart, so... But then everything I recommend
 12 based on our -- you know, my analysis and the
 13 compensation consultant's review goes to the full
 14 Human Resources Committee for their approval.
 15 Q. Okay. So what are the various factors that
 16 go into one's compensation review?
 17 A. So the various factors -- base compensation
 18 is big. We started looking at all compensation a
 19 few years back where we included not just base, but
 20 any variable compensation; bonuses, healthcare,
 21 meals, resident -- we even included the resident
 22 twice-a-year gift monies that would be distributed
 23 to, you know, all the staff with the exception of
 24 me; I opted out of that, didn't take resident money

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1 that was really meant for the line staff. So we put
 2 all that together so that they could see total
 3 compensation of, you know, everybody. They being
 4 the Human Resources Committee could see the total
 5 compensation of each director. We always made sure
 6 that our compensation ratios -- actually, when I
 7 first arrived the compensation ratios, for a large
 8 part, were below market value. I worked with Kathy,
 9 over the course of a few years, to move all of the
 10 senior managers to comp ratios that were, you know,
 11 roughly between 1.03 and 1.05 meaning above market
 12 value on their base compensation; that was something
 13 that was important to Kathy from the beginning and I
 14 did not disagree with her on it, and we have been
 15 very consistent with making sure that people are at
 16 least at their market value within three years of
 17 being either promoted or being hired, and that's our
 18 normal process and then, again, comp ratios usually
 19 land somewhere around 1.05 in a mature, you know,
 20 community, if you will. So it's very -- it's very
 21 prescribed and very consistent, you know, and,
 22 again, it's really driven by this very well-done
 23 program that has been developed at Waverly and been
 24 in place for years.

Page 195

1 Q. If you wanted to, could you have somebody
 2 sort of jump levels? If you -- suppose I were your
 3 employee and you particularly liked me --
 4 doubtful -- is there a way that I could jump levels?
 5 A. Well, the only way you can -- I mean jump
 6 levels -- you mean move up a level?
 7 Q. Yeah.
 8 A. That has to come from the compensation
 9 consultant. We could recommend -- if the job
 10 changed, like if there was a significant change in
 11 the aspects of the job from where they were to where
 12 they are now --
 13 Q. Right.
 14 A. -- you know, we could certainly have a
 15 conversation with a compensation consultant and then
 16 that would involve giving him a -- you know, a new
 17 job profile, job description for him to evaluate,
 18 and he would actually make the recommendation on
 19 whether or not it made sense to move that to the
 20 next level, and there are times that we have done
 21 that.
 22 Q. Can you remember specific people you did
 23 that with?
 24 A. Pattie Rodgers is one, Meredith Feher was

Page 196

1 one. Both of them received, you know, significant
 2 size increases over the years because, again, with
 3 that theory when the market -- when they were moved
 4 to the next level up, then their comp ratio would
 5 have dropped, so then that same theory -- in some
 6 cases we used three years; in other cases we bumped
 7 them, you know, close to the new market value to
 8 make sure that we were consistent in our
 9 programming, so those were -- those were a couple
 10 that I remember. There were a number of people at
 11 the same compensation level which was Kathy, the
 12 Vice President of Human Resources; Marc Heil, the
 13 Vice President of Building Services, and Janet
 14 Thompson, the Vice President of Marketing; all three
 15 of them were at the same level within the pay
 16 charts.
 17 Q. Did you ever make any recommendations with
 18 respect to, you know, jumping the levels with my
 19 client or on behalf of my client?
 20 A. To move the Vice President of Human
 21 Resources to the next level up?
 22 Q. Or even at anytime in her career?
 23 A. No. There was no reason to do that.
 24 MS. DEON: Excuse me one moment;

49 (Pages 193 to 196)

Appendix 1088

StenoSource, LLC

(215) 348-1095

THOMAS P. GARVIN

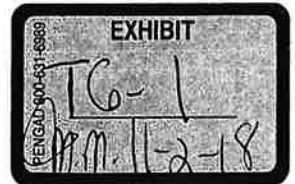
Page 197

1 I have to just excuse myself.
 2 (At this time, a short break was
 3 taken.)
 4 MR. SCHWARTZ: We'll continue the
 5 deposition at a time mutually convenient
 6 for Ms. Deon and myself and Mr. Garvin, and
 7 the opportunity, if you want it, is I can
 8 certainly arrange for an office that's
 9 closer to where Mr. Garvin works for future
 10 depositions; whatever you want.
 11 MS. DEON: Okay.
 12 (Witness excused.)
 13 (Deposition suspended at 4:55
 14 p.m.)
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

Page 198

1 CERTIFICATION
 2
 3
 4
 5 I, MICHELLE C. MacARTHUR, Certified Court
 6 Reporter, do hereby certify that the foregoing is a
 7 true and accurate transcript of the stenographic
 8 notes taken by me in the aforementioned matter.
 9
 10
 11 ---
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22 DATE: _____
 23 MICHELLE C. MacARTHUR, C.C.R.
 24 License No. X102192

50 (Pages 197 to 198)



Robert L. Robinson

Former Senior Vice President and Chief Counsel Litigation and Insurance Law, CIGNA;
Former Senior Vice President and Officer for Insurance Company of North America, Connecticut
General Life Insurance and CIGNA Reinsurance Company;
Former Director for Philadelphia Reinsurance Corp.;
Former Counsel and Managing Attorney for Xerox Corp.



Anita A. Summers

Professor Emeritus, University of Pennsylvania
Former Professor of Public Policy and Management and also Department Chair, Wharton School of
University of Pennsylvania
Director of Research, Samuel Zell and Robert Lurie Real Estate Center, Wharton

MISSION STATEMENT

Waverly Heights, Ltd. is a non-profit corporation established to provide quality lifecare services to its residents. Its purpose is to serve the physical, emotional, recreational, social, religious and health needs of the Waverly Heights population in a professional and caring manner. These services are to be provided efficiently and economically within a financially stable organization.

STATEMENT OF PURPOSES

1. To provide residents with services of the highest quality which meet the reasonable expectations of residents, and to provide those services within the budgets approved by the Board of Directors.
2. To provide the grounds, buildings, and equipment which reflect a quality environment.
3. To provide opportunities for residents to communicate with the Board, management, and staff; and to address resident concerns promptly and in a positive manner.
4. To provide the means whereby residents and employees participate in decisions that affect them.
5. To recruit, train, compensate, and manage employees in a fair manner so that they can participate effectively and enthusiastically in the professional delivery of the service we strive to achieve.
6. To provide an opportunity for residents to continue to contribute to the local community by supporting and participating in the activities of the Lower Merion Township community.

*Waverly Heights
Confidential 1999 Competitive Review*

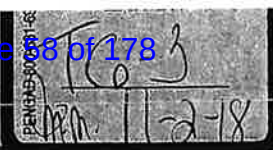
**WAVERLY
STRENGTHS**

- Residential location
- Spacious campus/extensive landscaping
- Percentage of health care beds to residential units
- Size of Assisted Living Units
- Reputation of Health Center
- In-House TV Channel (vs. Beaumont)
- Special Needs Unit
- Type of Building Construction
- Pub
- Garage Parking
- CCAC Accreditation (vs. Quadrangle)
- 100% Recoverable Entrance Fee
- Optional Pricing Plans (vs. Beaumont)
- Prescription Drug Coverage
- Meal Plan Flexibility
- No Limit on Number of Health Center Days
- No Charge for Transportation to Medical Appointments

**WAVERLY
WEAKNESSES**

- Size of apartments (vs. Beaumont)
- Dinner Hours (vs. all)
- Lowest Amount of Meal Credit (vs. all)
- No U.S. Mail Delivery to Villas (vs. all)
- Telephone System*
- No Nurse Practitioner for ILU

** Enhancements to the telephone system were made in 1998. Certain features have yet to be made available to Waverly residents in 1999.*



Thomas Garvin

From: Thomas Garvin
Sent: Wednesday, November 23, 2016 9:15 AM
To: Buehler, Susan
Subject: Memo to Residents Personnel Change HR 9.30.2016
Attachments: Resident Memo Personnel Announcement HR 9.30.2016.pdf

Hi Susan,

Here is the notice that went to our residents.

tom

Thomas P. Garvin

President & Chief Executive Officer

Waverly Heights Ltd.

1400 Waverly Road - Gladwyne, PA 19035

www.waverlyheightsltd.org

Phone: 610.645.8607

Fax: 610.645.8602

BEST PLACES
to work in PA



From: Amy Blessing

Sent: Friday, September 30, 2016 2:00 PM

To: Leadership Team <leaderteam@whltd.org>

Cc: Kaitlyn Devany <kaitlyn.devany@waverlyheightsltd.org>; Cheryl Minnick <cheryl.minnick@waverlyheightsltd.org>;
 Front Desk <frontdesk@waverlyheightsltd.org>

Subject: Memo to Residents Personnel Change HR 9.30.2016

Team,

We are distributing the attached memo to our residents today.

aeb

CONFIDENTIALITY NOTICE

This transmission may contain information that is privileged, confidential and/or otherwise protected from disclosure to anyone other than its intended recipient(s). Any disclosure, dissemination, distribution, or copying of this communication or its contents except as permitted by law governing privacy of information issues is strictly prohibited.

Thomas Garvin

From: Thomas Garvin
Sent: Wednesday, November 23, 2016 9:11 AM
To: Buehler, Susan
Subject: Emailing: employee announcement
Attachments: employee announcement.pdf

Hi Susan,

Attached is the memo that went to staff. I'll also send you the memo that went to our residents.

Thank you,

Tom

Best regards,
Tom

Thomas P. Garvin

President & Chief Executive Officer

Waverly Heights Ltd.

1400 Waverly Road - Gladwyne, PA 19035

www.waverlyheightsltd.org

Phone: 610.645.8607

Fax: 610.645.8602

BEST PLACES
to work in **PA** 



Thomas Garvin

From: Thomas Garvin
Sent: Thursday, September 29, 2016 12:50 PM
To: rebauer65@yahoo.com
Subject: FW: Announcement

Hi Dick,

Below is the memo that was sent to staff yesterday. I also had all the Directors meeting with their respective teams to inform them about the change.

I'll send you what we have prepared for distribution to the residents in a separate email. I don't plan to put that memo out until tomorrow due to the fact that her in-laws live her and I need to be sure they are aware before a memo goes out. Not a lot of the resident really even know Kathy so it should be okay to distribute by tomorrow.

Thanks,

Tom

Thomas P. Garvin
President & Chief Executive Officer
Waverly Heights Ltd.
1400 Waverly Road - Gladwyne, PA 19035
www.waverlyheightsltd.org
Phone: 610.645.8607
Fax: 610.645.8602

BEST PLACES
to work in **PA** 



From: Thomas Garvin
Sent: Wednesday, September 28, 2016 4:10 PM
To: All Waverly Care Associates Employees ; All Waverly Heights Employees
Subject: Announcement

TO: OUR VALUED EMPLOYEES
FROM: THOMAS P. GARVIN, PRESIDENT AND CEO .
DATE: SEPTEMBER 28, 2016
SUBJECT: PERSONNEL CHANGES

Dear Employees,

I regretfully inform you that Kathy Jungclaus, our Vice President of Human Resources, is no longer with our organization. We are extremely appreciative of Kathy's many years of service to Waverly and wish her the best of luck in her future.

Members of Senior Management and our current Human Resources Department staff, Jacquie Levin and Jennifer Davies, will fulfill the needs of our employees during this recruitment and transition period. Should you have any questions, please contact your Department Director.

Appendix 1096

Waverly-0916

Dick

Richard E. Bauer

From: Thomas Garvin [<mailto:thomas.garvin@waverlyheightsltd.org>]

Sent: Wednesday, September 28, 2016 12:28 PM

To: 'Anita Summers'; Anne Conroy; 'Bill Bates'; 'Chuck Soltis'; 'David J. Farling'; 'Dick Conway'; 'Don Fleischer'; 'Dr. Lewis W. Bluemle'; 'Ed Mahoney'; edavis5167@gmail.com; 'Gary L. Bragg'; Gerald Renthal - Trustee (agrenthal@gmail.com); 'Howard Buzzard'; Jerry Hansen; 'Kathleen A. McEndy'; 'Malcolm L. Schoenberg'; Michael Buckley MD (rmbmd7@gmail.com); 'Richard E. Bauer'; 'Robert Barry'; 'Scott Jenkins'; 'Stephen W. Fugale'; Steven D. Kirkpatrick - WHL Trustee (kirkpatrick@mlhs.org); wessdeb@gmail.com

Subject: Kathy Jungclaus

Trustees:

Over the last week I have been dealing with a significant issue involving our VP of Human Resources, Kathy Jungclaus. The issue came to light early last week when I received an anonymous letter about a major concern with something Kathy posted on her personal Twitter account which was directly linked to Waverly and her position in HR. Given the significance of the issue, I took the issue to our Human Resources Committee and to a labor attorney for review and consideration. The end result of our investigation was that Kathy had committed a very blatant violation of our Social Media Policy by placing a very inappropriate statement on her Twitter account. She has subsequently been asked to resign and is no longer an employee of Waverly Heights. She will be given a severance agreement that is very fair given her length of service with the organization.

I will certainly cover this in executive session at the October board meeting. In the meantime, if you have any questions regarding this matter, please do not hesitate to contact me directly.

Thank you,

Tom

Thomas P. Garvin

President & Chief Executive Officer

Waverly Heights Ltd.

1400 Waverly Road - Gladwyne, PA 19035

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BEST PLACES
to work in **PA** 



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Thomas Garvin

From: Dick Bauer <rebauer65@yahoo.com>
Sent: Wednesday, September 28, 2016 4:36 PM
To: anneconroy@cs.com
Cc: Thomas Garvin
Subject: [EXTERNAL]RE: Kathy Jungclaus

Thank you for your kind note, Anne.

See you soon.

Dick

Richard E. Bauer

From: anneconroy@cs.com [mailto:anneconroy@cs.com]
Sent: Wednesday, September 28, 2016 2:51 PM
To: rebauer65@yahoo.com
Cc: thomas.garvin@waverlyheightsltd.org
Subject: Re: Kathy Jungclaus

Thank you for that additional note. I am sure it was a terrible situation, leaving everyone feeling miserable, but I trust it was handled as well as possible.
Anne

-----Original Message-----

From: Dick Bauer
To: 'Thomas Garvin'; 'Anita Summers'; 'Anne Conroy'; 'Bill Bates'; 'Chuck Soltis'; 'David J. Farling'; 'Dick Conway'; 'Don Fleischer'; 'Dr. Lewis W. Bluemle'; 'Ed Mahoney'; edavis5167; 'Gary L. Bragg'; 'Gerald Renthal - Trustee'; 'Howard Buzzard'; 'Jerry Hansen'; 'Kathleen A. McEndy'; 'Malcolm L. Schoenberg'; 'Michael Buckley MD'; 'Robert Barry'; 'Scott Jenkins'; 'Stephen W. Fugale'; 'Steven D. Kirkpatrick - WHL Trustee'; wessdeb
Sent: Wed, Sep 28, 2016 1:23 pm
Subject: RE: Kathy Jungclaus

This is just a brief follow-up to Tom's message about this unfortunate situation.

Tom has been thoughtful and deliberate throughout the discovery and termination process and he handled yesterday's difficult termination discussion in a clear, compassionate and professional manner. He has a long list of next steps to follow up on yesterday's termination and is doing an excellent job of communicating with all of the appropriate parties. This will take some time to sort out, but we are well on the way in that regard.

I would be remiss if I failed to mention that Kathy Jungclaus tearfully asked me to apologize to both the HR Committee and the full Board for her poor judgment.

Please feel free to touch base with me (or Tom) if you have comments or questions.

HR Committee: thanks so much for your helpful insights and perspectives!

Thomas Garvin

From: Thomas Garvin
Sent: Wednesday, September 28, 2016 4:10 PM
To: All Waverly Care Associates Employees; All Waverly Heights Employees
Subject: Announcement

TO: OUR VALUED EMPLOYEES
FROM: THOMAS P. GARVIN, PRESIDENT AND CEO
DATE: SEPTEMBER 28, 2016
SUBJECT: PERSONNEL CHANGES

Dear Employees,

I regretfully inform you that Kathy Jungclaus, our Vice President of Human Resources, is no longer with our organization. We are extremely appreciative of Kathy's many years of service to Waverly and wish her the best of luck in her future.

Members of Senior Management and our current Human Resources Department staff, Jacquie Levin and Jennifer Davies, will fulfill the needs of our employees during this recruitment and transition period. Should you have any questions, please contact your Department Director.

Best regards,
Tom

Thomas P. Garvin

President & Chief Executive Officer

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to work in **PA**



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Best regards,
Tom

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BEST PLACES
to work in **PA**



Tom

Thomas P. Garvin

President & Chief Executive Officer

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BEST PLACES 
to work in



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Thomas Garvin

From: Stephen Fugale <stephen.fugale@villanova.edu>
Sent: Wednesday, September 28, 2016 12:52 PM
To: Thomas Garvin
Subject: [EXTERNAL][CONTENT] RE: Kathy Jungclaus

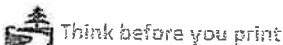
Sorry to hear this Tom but thanks for taking prompt and appropriate action.

I know October will be upon us soon, is there anything you need from me regarding the Risk Committee?

Steve

Stephen Fugale

Vice President & Chief Information Officer | Villanova University
800 Lancaster Ave | Technology Services Building | Villanova, PA 19085
Tel 610-519-4402 | Fax 610-519-4435 | Stephen.Fugale@villanova.edu



From: Thomas Garvin [mailto:thomas.garvin@waverlyheightsltd.org]

Sent: Wednesday, September 28, 2016 12:28 PM

To: 'Anita Summers'; Anne Conroy; 'Bill Bates'; 'Chuck Soltis'; 'David J. Farling'; 'Dick Conway'; 'Don Fleischer'; 'Dr. Lewis W. Bluemle'; 'Ed Mahoney'; edavis5167@gmail.com; 'Gary L. Bragg'; Gerald Renthal - Trustee (agrenthal@gmail.com); 'Howard Buzzard'; Jerry Hansen; 'Kathleen A. McEndy'; 'Malcolm L. Schoenberg'; Michael Buckley MD (rmbmd7@gmail.com); 'Richard E. Bauer'; 'Robert Barry'; 'Scott Jenkins'; Stephen Fugale; Steven D. Kirkpatrick - WHL Trustee (kirkpatrick@mlhs.org); wessdeb@gmail.com

Subject: Kathy Jungclaus

Trustees:

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I will certainly cover this in executive session at the October board meeting. In the meantime, if you have any questions regarding this matter, please do not hesitate to contact me directly.

Thank you,

Thomas Garvin

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Subject: Kathy Jungclaus

Trustees:

Over the last week I have been dealing with a significant issue involving our VP of Human Resources, Kathy Jungclaus. The issue came to light early last week when I received an anonymous letter about a major concern with something Kathy posted on her personal Twitter account which was directly linked to Waverly and her position in HR. Given the significance of the issue, I took the issue to our Human Resources Committee and to a labor attorney for review and consideration. The end result of our investigation was that Kathy had committed a very blatant violation of our Social Media Policy by placing a very inappropriate statement on her Twitter account. She has subsequently been asked to resign and is no longer an employee of Waverly Heights. She will be given a severance agreement that is very fair given her length of service with the organization.

I will certainly cover this in executive session at the October board meeting. In the meantime, if you have any questions regarding this matter, please do not hesitate to contact me directly.

Thank you,

Tom

Thomas P. Garvin

President & Chief Executive Officer

Waverly Heights Ltd.

1400 Waverly Road - Gladwyne, PA 19035

www.waverlyheightsltd.org

Phone: 610.645.8607

Fax: 610.645.8602

BEST PLACES to work in PA 



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Thomas Garvin

From: Dick Bauer <rebauer65@yahoo.com>
Sent: Tuesday, September 27, 2016 8:21 PM
To: Thomas Garvin; gbragg@obs-law.com; edavis5167@gmail.com;
ebmahoney@ebmahoney.com; donfle@comcast.net; kmcendy@comcast.net;
soltis@earthlink.net
Cc: Anita Summers
Subject: [EXTERNAL]RE: K Jungclaus

It was indeed a gut wrenching and difficult experience. Tom was deliberate, considerate and firm in his approach. Kathy's comments were very telling.

Tom and I are documenting the discussion for the record.

Thank you all for your thoughtful consideration and willingness to be generous under these unusual circumstances.

Tom will keep our committee advised of future events.

Feel free to connect with Tom or me if you wish to discuss further.

Dick

Richard E. Bauer

From: Thomas Garvin [mailto:thomas.garvin@waverlyheightsltd.org]
Sent: Tuesday, September 27, 2016 5:29 PM
To: rebauer65@yahoo.com; gbragg@obs-law.com; edavis5167@gmail.com; ebmahoney@ebmahoney.com;
donfle@comcast.net; kmcendy@comcast.net; soltis@earthlink.net
Cc: Anita Summers
Subject: K Jungclaus

HR Committee:

Thank you again for your guidance and support in dealing with the situation with Kathy Jungclaus. I wanted to let you know that Dick and I met with her late this afternoon and informed her that she was being asked to resign effective immediately. It went about as well as you would expect, but the end result is that she is no longer an employee of Waverly Heights.

I will send notice to the full board within the next 24 hours.

Thank you again,

Tom

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Fax: 610.645.8602

Thomas Garvin

From: Ed Mahoney <ebmahoney@ebmahoney.com>
Sent: Tuesday, September 27, 2016 5:40 PM
To: Thomas Garvin
Cc: rebauer65@yahoo.com; gbragg@obs-law.com; edavis5167@gmail.com; donfle@comcast.net; kmcendy@comcast.net; soltis@earthlink.net; Anita Summers
Subject: [EXTERNAL]Re: K Jungclaus

Rough day Tom
Thank you

Sent from my iPhone

On Sep 27, 2016, at 5:28 PM, Thomas Garvin <thomas.garvin@waverlyheightsltd.org> wrote:

HR Committee:

Thank you again for your guidance and support in dealing with the situation with Kathy Jungclaus. I wanted to let you know that Dick and I met with her late this afternoon and informed her that she was being asked to resign effective immediately. It went about as well as you would expect, but the end result is that she is no longer an employee of Waverly Heights.

I will send notice to the full board within the next 24 hours.

Thank you again,

Tom

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Thomas Garvin

From: Eleanor Davis <edavis5167@gmail.com>
Sent: Tuesday, September 27, 2016 5:40 PM
To: Thomas Garvin
Cc: rebauer65@yahoo.com; gbragg@obs-law.com; ebmahoney@ebmahoney.com;
donfle@comcast.net; kmcendy@comcast.net; soltis@earthlink.net; Anita Summers
Subject: [EXTERNAL]Re: K Jungclaus

I know how difficult this has been for all involved and thank you for your steadfast leadership.
Eleanor

Sent from my iPhone

On Sep 27, 2016, at 10:28 PM, Thomas Garvin <thomas.garvin@waverlyheightsltd.org> wrote:

HR Committee:

Thank you again for your guidance and support in dealing with the situation with Kathy Jungclaus. I wanted to let you know that Dick and I met with her late this afternoon and informed her that she was being asked to resign effective immediately. It went about as well as you would expect, but the end result is that she is no longer an employee of Waverly Heights.

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Thank you again,

Tom

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Thomas Garvin

From: Thomas Garvin
Sent: Tuesday, September 27, 2016 5:29 PM
To: rebauer65@yahoo.com; gbragg@obs-law.com; edavis5167@gmail.com;
ebmahoney@ebmahoney.com; donfle@comcast.net; kmcendy@comcast.net;
soltis@earthlink.net
Cc: Anita Summers
Subject: K Jungclaus

HR Committee:

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I will send notice to the full board within the next 24 hours.

Thank you again,

Tom

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to work in



We have an urgent need to have a CONFIDENTIAL conference call regarding a significant issue with one of our senior managers. Dick and are are hoping to plan the call for 11:00 Monday Morning. Please RSVP to this email regarding your availability.

Time: 11:00 AM

Date: Monday, September 26th

Call-In Number: 800-501-8979

Meeting I.D.: 6458600

By way of separate email, I will forward documents for your review prior to the call.

We are also asking Anita, as Chair of Ethics Committee to join the discussion.

Please keep this call confidential.

Thank you,

Tom

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From: Tom Garvin <thomas.Garvin@waverlyheightsltd.org>
Date: Sunday, September 25, 2016 at 4:42 PM
To: Richard Bauer <richard.bauer@waverlyheightsltd.org>, Edwin Mahoney
<edwin.mahoney@waverlyheightsltd.org>, Gary Bragg <gary.bragg@waverlyheightsltd.org>, Eleanor
Davis <eleanor.davis@waverlyheightsltd.org>, Donald Fleischer
<donald.fleischer@waverlyheightsltd.org>, Kathleen McEndy
<kathleen.mcendy@waverlyheightsltd.org>, Charles Soltis <charles.soltis@waverlyheightsltd.org>
Cc: Anita Summers <summers@wharton.upenn.edu>
Subject: HIGHLY CONFIDENTIAL Conference Call

Thomas P. Garvin

President & Chief Executive Officer
Waverly Heights Ltd.
1400 Waverly Road - Gladwyne, PA 19035
www.waverlyheightsltd.org
Phone: 610.645.8607
Fax: 610.645.8602

From: Thomas Garvin

Sent: Sunday, September 25, 2016 4:59 PM

To: Richard Bauer <richard.bauer@waverlyheightsltd.org>; Edwin Mahoney <edwin.mahoney@waverlyheightsltd.org>; Gary Bragg <gary.bragg@waverlyheightsltd.org>; Eleanor Davis <eleanor.davis@waverlyheightsltd.org>; Donald Fleischer <donald.fleischer@waverlyheightsltd.org>; Kathleen McEndy <kathleen.mcendy@waverlyheightsltd.org>; Charles Soltis <charles.soltis@waverlyheightsltd.org>
Cc: Anita Summers <summers@wharton.upenn.edu>
Subject: Re: HIGHLY CONFIDENTIAL

HR Committee:

I received the attached anonymous letter last week regarding the conduct of Kathy Jungclaus with respect to her personal Twitter account. The content of the letter is the subject of our upcoming confidential conference call. The issue is very serious and I have asked one of our Labor Relations Attorneys to review the situation. Our attorney has summarized the legal issues in the email included below.

Also, Dick and I feel that the nature of the issues warrant including Anita as Chair of our Ethics Committee.

Please let me know if you are able to attend the conference call at 11:00 tomorrow morning.

Thank you,

Tom

Thomas Garvin

From: Thomas Garvin
Sent: Monday, September 26, 2016 3:02 PM
To: 'Eleanor Davis'; ebmahoney@ebmahoney.com; donfle@comcast.net
Cc: rebauer65@yahoo.com
Subject: RE: [EXTERNAL]Re: HIGHLY CONFIDENTIAL

Hi Eleanor, Don & Ed,

I wanted to let you know that everyone on the HR Committee call was in agreement that Kathy Jungclaus should be terminated from Waverly Heights. We will offer her the opportunity to resign with a severance agreement put in place.

Dick Bauer and I plan to meet with Kathy tomorrow afternoon so I can communicate that she is being relieved of her duties. Until then, please keep this highly confidential.

Thank you for your support on this very difficult situation.

Tom

Thomas P. Garvin
President & Chief Executive Officer
Waverly Heights Ltd.
1400 Waverly Road - Gladwyne, PA 19035
www.waverlyheightsltd.org
Phone: 610.645.8607
Fax: 610.645.8602

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From: Eleanor Davis [mailto:edavis5167@gmail.com]
Sent: Monday, September 26, 2016 2:02 PM
To: Thomas Garvin
Subject: [EXTERNAL]Re: HIGHLY CONFIDENTIAL

Tom,
Please keep me informed of the out come of the conference call. I can be reached by email now.
Glad we had a chance to talk this morning.
I will return on Wed.
Sincerely,
Eleanor

Sent from my iPhone

On Sep 26, 2016, at 2:11 PM, Thomas Garvin <thomas.garvin@waverlyheightsltd.org> wrote:

Thomas Garvin

From: Thomas Garvin
Sent: Monday, September 26, 2016 2:59 PM
To: 'Summers, Anita A'
Subject: RE: [EXTERNAL]quick thought

Thank you so much Anita, I appreciate your support on this very difficult situation.

I will definitely pull her email and freeze everything the minute she is released. Dick is coming tomorrow afternoon to be with me when I terminate her employment. At that point her access to everything will be cut-off.

It should be an interesting day!

Tom

Thomas P. Garvin

President & Chief Executive Officer

Waverly Heights Ltd.

1400 Waverly Road - Gladwyne, PA 19035

www.waverlyheightsltd.org

Phone: 610.645.8607

Fax: 610.645.8602

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to work in PA 



From: Summers, Anita A [mailto:summers@wharton.upenn.edu]
Sent: Monday, September 26, 2016 2:29 PM
To: Thomas Garvin
Subject: [EXTERNAL]quick thought

Tom: You are such a wondrous CEO!

Quick thought: should you freeze her Waverly email address, and look over recent mail?.....Anita

Thomas Garvin

From: Thomas Garvin
Sent: Monday, September 26, 2016 10:22 AM
To: 'Richard Bauer'
Subject: RE: [EXTERNAL]

Hi Dick,

We are ready for the call. I have touched based with everyone and all can be on the call except Eleanor and Don. I spoke in detail to both of them and they concur that she cannot remain in her role given the fact of the situation.

I'll talk to you on the call at 11.

Tom

Thomas P. Garvin
President & Chief Executive Officer
Waverly Heights Ltd.
1400 Waverly Road - Gladwyne, PA 19035
www.waverlyheightsltd.org
Phone: 610.645.8607
Fax: 610.645.8602

-----Original Message-----

From: Richard Bauer [mailto:rebauer65@yahoo.com]
Sent: Monday, September 26, 2016 10:20 AM
To: Thomas Garvin <thomas.garvin@waverlyheightsltd.org>
Subject: [EXTERNAL]

I have a feeling that you are having a challenging morning. Let me know how you are doing when you can. Thanks.

Sent from my iPhone

From: Tom Garvin <thomas.Garvin@waverlyheightsltd.org>
Date: Sunday, September 25, 2016 at 4:42 PM
To: Richard Bauer <richard.bauer@waverlyheightsltd.org>, Edwin Mahoney <edwin.mahoney@waverlyheightsltd.org>, Gary Bragg <gary.bragg@waverlyheightsltd.org>, Eleanor Davis <eleanor.davis@waverlyheightsltd.org>, Donald Fleischer <donald.fleischer@waverlyheightsltd.org>, Kathleen McEndy <kathleen.mcendy@waverlyheightsltd.org>, Charles Soltis <charles.soltis@waverlyheightsltd.org>
Cc: Anita Summers <summers@wharton.upenn.edu>
Subject: HIGHLY CONFIDENTIAL Conference Call

Human Resources Committee:

We have an urgent need to have a CONFIDENTIAL conference call regarding a significant issue with one of our senior managers. Dick and I are hoping to plan the call for 11:00 Monday Morning. Please RSVP to this email regarding your availability.

Time: 11:00 AM
Date: Monday, September 26th
Call-In Number: 800-501-8979
Meeting I.D.: 6458600

By way of separate email, I will forward documents for your review prior to the call.

We are also asking Anita, as Chair of Ethics Committee to join the discussion.

Please keep this call confidential.

Thank you,

Tom

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Thomas Garvin

From: Thomas Garvin
Sent: Sunday, September 25, 2016 4:59 PM
To: Richard Bauer; Edwin Mahoney; Gary Bragg; Eleanor Davis; Donald Fleischer; Kathleen McEndy; Charles Soltis
Cc: Anita Summers
Subject: Re: HIGHLY CONFIDENTIAL
Attachments: Twitter Issue.pdf

HR Committee:

I received the attached anonymous letter last week regarding the conduct of Kathy Jungelaus with respect to her personal Twitter account. The content of the letter is the subject of our upcoming confidential conference call. The issue is very serious and I have asked one of our Labor Relations Attorneys to review the situation. Our attorney has summarized the legal issues in the email included below.

Also, Dick and I feel that the nature of the issues warrant including Anita as Chair of our Ethics Committee.

Please let me know if you are able to attend the conference call at 11:00 tomorrow morning.

Thank you,

Tom

Thomas Garvin

From: Thomas Garvin
Sent: Sunday, September 25, 2016 4:42 PM
To: Richard Bauer; Edwin Mahoney; Gary Bragg; Eleanor Davis; Donald Fleischer; Kathleen McEndy; Charles Soltis
Cc: Anita Summers
Subject: HIGHLY CONFIDENTIAL Conference Call
Categories: My Contacts

Human Resources Committee:

We have an urgent need to have a CONFIDENTIAL conference call regarding a significant issue with one of our senior managers. Dick and I are hoping to plan the call for 11:00 Monday Morning. Please RSVP to this email regarding your availability.

Time: 11:00 AM
Date: Monday, September 26th
Call-In Number: 800-501-8979
Meeting I.D.: 6458600

By way of separate email, I will forward documents for your review prior to the call.

We are also asking Anita, as Chair of Ethics Committee to join the discussion.

Please keep this call confidential.

Thank you,

Tom

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Thomas Garvin

From: Thomas Garvin
Sent: Friday, September 23, 2016 9:14 AM
To: Dick Bauer
Subject: Re: [EXTERNAL][CONTENT]

Hi Dick,

Thank you for your assistance with this unfortunate situation. Let's definitely plan to talk on Sunday. Please let me know after you speak with Anita so I can send out an invitation for a call with the HR Committee on Monday. I agree that in advance of that call, I'll send out the policy information. I'm figuring that we should probably send the letter and the attorney's review just prior to the call. I would really like to have the committee review the letter and the twitter feed prior to the call so they have all the information.

We can talk more about that when we speak this weekend.

Tom

From: Richard Bauer <rebauer65@yahoo.com>
Date: Friday, September 23, 2016 at 8:59 AM
To: Tom Garvin <thomas.Garvin@waverlyheightsltd.org>
Subject: [EXTERNAL][CONTENT]

Hi Tom,

I sent Anita an e-mail last night indicating that I would call her this morning. She responded that she will be unavailable until this afternoon and I sent a note back indicating that I would call after 3 today. I will send you an email summary following that discussion.

I have not read the policy info that you sent yet, but I will get to that today. It might be good to send this same info to the HR Committee and Anita prior to our upcoming meeting if you feel that is appropriate.

Feel free to call if I can be helpful on Sunday any time if you wish to discuss any of this but do not feel obliged to do so.

I know this is a big issue and you are handling it extremely well. Enjoy your family time and safe trip home.

Dick

Richard E. Bauer

Thomas Garvin

From: Thomas Garvin
Sent: Thursday, September 22, 2016 3:12 PM
To: Dick Bauer
Subject: Re: [EXTERNAL]

Okay, we can finalize when we talk tomorrow. I think we can aim to set-up the call for 10:30 Monday morning if possible. Hopefully you can connect with Anita before we talk tomorrow so we can get her onboard before I send the invitation for a call to the HR Committee.

The conference ends at noon tomorrow, so I'll try to call you by 12:30.

Also, I expect to have the bullet point email from our attorney by end of day tomorrow.

Thanks again,

Tom

From: Richard Bauer <rebauer65@yahoo.com>
Date: Thursday, September 22, 2016 at 3:04 PM
To: Tom Garvin <thomas.Garvin@waverlyheightsltd.org>
Subject: [EXTERNAL]

Hi again,
I really like your approach to moving this forward and the Board tactics are superb in my view. I have an early morning dental appointment which should be done by 10:15 at the latest. It is in Bryn Mawr. I am free the rest of the day with one exception which I can handle. I can be very flexible the rest of the week. If you are free around 10:30 on Monday I can either swing by or give you a call to discuss further.

You might want to think about the possibility of my saying something to the HR Committee and perhaps the Board later about your comments to me earlier this year regarding the individual in question. I have some other questions and suggestions which we can discuss either tomorrow afternoon or next week as circumstances warrant.
I hope you can enjoy your weekend down there. This, too, shall pass.

Dick

Richard E. Bauer

EXHIBIT “TG 4”

SEE APPENDIX 1-90



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KATHLEEN M. JUNGCLAUS

:

:

CIVIL ACTION

Plaintiff

:

:

NO. 17-CV-4462

v.

:

WAVERLY HEIGHTS LTD.,

:

THOMAS P. GARVIN and John and Jane Doe

:

Numbers 1 through 23

:

Defendants

:

**DEFENDANT, WAVERLY HEIGHTS LTD.'S RESPONSE TO
PLAINTIFF'S REQUEST FOR ADMISSIONS¹**

Defendant, Waverly Heights Ltd ("Waverly" or "Defendant"), responds to Plaintiff's Request for Admissions, by and through its counsel, and in response thereto avers as follows:

1. Kindly admit that email authored by former Board Chairman Charles Soltis, email that was critical of Barack Obama, was at one time on Waverly's email system?

Admitted _____ Denied X

Denied. At no time were emails sent to the public at large. The Board Chairman was not an employee. It is admitted only that on occasion he sent emails to non-Waverly individuals and he would also include Thomas Garvin, Janet Thompson and/or Plaintiff politically themed emails. However, it is denied that the emails were racist. It is

¹ By virtue of the dismissal with prejudice of Counts V and VI of the Complaint, there are claims remaining only against Waverly Heights Ltd. The Court is in the process of communicating to the Civil Clerk that the other two defendants should be dismissed as parties to this action. As such, Waverly Heights Ltd. is the responding party.

believed and therefore averred that said emails were conservatively than liberally oriented (i.e. political cartoons that appear in the public domain).

2. Kindly admit that the "Anonymous" letter sent to Defendant Garvin was written by a Board of Trustees member.

Admitted _____ Denied X _____

Denied. Defendant is without knowledge or information to form a belief as to the identity of who wrote the anonymous letter.

3. Kindly admit that, prior to her dismissal, no meeting, was had of the full Human Resource Committee of the Board of Trustees to discuss, and/or vote on the termination of the Plaintiff for violating the Waverly's Social Media Policy.

Admitted X _____ Denied X _____

Admitted in part, denied in part. It is admitted that the full Human Resources Committee did not meet; however, the members of the committee that did meet constituted a quorum. Further, said meeting was held for the sole purpose of discussing Plaintiff's conduct and the outcome. It is denied that violation of the social media policy was the sole reason for her termination. Rather, it was primarily due to exercising poor judgment for a Vice President of Human Resources and conduct detrimental to Waverly's operations going forward given her role to enforce Waverly's policies amongst a diverse employee population. Moreover, such conduct negatively impacted Waverly's public relations with members of its community and potentially outside of the Waverly community.

4. Kindly admit that prior to her dismissal, no meeting was held of the full Board of Trustees to discuss, and/or vote on the termination of the Plaintiff for violating Waverly's Social Media Policy.

Admitted X _____ Denied X _____

Admitted in part, denied in part. It is admitted that Waverly's full Board of Trustees did not meet to discuss Plaintiff's conduct and termination. It is denied for the reasons specified in Defendant's response to Request for Admissions No. 3, above, that the sole reason for termination was only related to an alleged violation of the social media policy. The response to Request for Admissions No. 3 is incorporated herein by reference as if set forth at length.

5. Kindly admit that the full members of the Human Resource Committee of the Board of Trustees and the full Board of Trustee members were notified of the termination of the Plaintiff for violating the Waverly Social Media Policy after the termination of the plaintiff.

Admitted X Denied X

Admitted in part, denied in part. It is admitted that following Plaintiff's termination, at some point thereafter, the full Board of Trustees and full Human Resource Committee members were made aware of Plaintiff's separation from employment. Although the writing transmitted to the aforementioned referenced the violation of the social media policy, the additional grounds for termination as referenced in Defendants' response to Request for Admission No. 3, above, were also communicated orally.

6. Kindly admit that at no time was Plaintiff interviewed or provided an opportunity to discuss the terminating offense with Defendant Garvin, the Human Resource Committee members, or Full Board of Trustee members either individually or collectively prior to being terminated.

Admitted Denied X

Denied. Plaintiff had an opportunity to discuss the subject events with Thomas Garvin upon his discovery of the same, as well as on another occasion when Defendants' agents informed her of the decision to terminate her employment. By way of further answer, while Mr. Garvin was away on business the following week, Plaintiff packed up her office and informed others in the office that she anticipated being terminated. Plaintiff did not, as she now claims, attempt to reach Mr. Garvin.

7. Kindly admit that Kathleen Jungclaus was sexually harassed in the workplace in the presence of Defendant Garvin and Robert Supper, and no action was taken.


Admitted Denied X

Denied. By way of further answer, at no time has Plaintiff even contended that she was sexually harassed. By way of further answer, there is a corporate compliance line and at no time did she ever make a complaint of any type of harassment or discrimination that would be legally actionable. Rather, Plaintiff verbally complained to Mr. Garvin that the female CFO was causing a hostile workplace without any claim that Plaintiff

was in a protected class. Mr. Garvin promptly addressed the situation with Plaintiff and when he wanted to proceed further, Plaintiff requested that no action be action.

EASTBURN AND GRAY, P.C.

Dated: April 18, 2018

By: 
Grace M. Deon
Attorneys for Defendant

60 East Court Street
P.O. Box 1389
Doylestown, PA 18901
Phone: (215) 345-7000
Facsimile: (215) 345-9142
gdeon@eastburngray.com

EXHIBIT “TG 6”

SEE APPENDIX 568-597

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**



KATHLEEN M. JUNGCLAUS

NO. 17-cv-04462-RK

Plaintiff

v.

Jury Trial Demanded

WAVERLY HEIGHTS, LTD.,
THOMAS P. GARVIN and
JOHN and JANE DOES NUMBERS 1-21

Defendants

**ANSWER WITH AFFIRMATIVE DEFENSES BY DEFENDANT,
WAVERLY HEIGHTS, LTD., TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Defendant, Waverly Heights, Ltd. ("Waverly" or "Defendant"),¹ by and through its attorneys, Eastburn and Gray, P.C., answers the First Amended Complaint of Plaintiff, Kathleen M. Jungclaus ("Plaintiff"), and in response thereto avers as follows:

NATURE OF THIS ACTION

1. Denied. The First Amended Complaint is a writing, the language of which speaks for itself. To the extent that the allegations contained in paragraph 1 constitute conclusions of law, they are denied and no further response is required.

PARTIES

2. Admitted. By way of further answer, it was Thomas Garvin's ("Mr. Garvin") idea to designate Plaintiff as a vice-president.

¹ On April 9, 2018, this Honorable Court granted Defendants' Motion to Dismiss whereby Count V (Defamation) and Count VI (Negligent Supervision of Thomas Garvin) were dismissed with prejudice. As a result, neither Thomas P. Garvin nor John and Jane Doe Numbers 1-21 (Waverly's Board of Trustees) are parties to this action.

3. Admitted in part, denied in part. Defendant's location, establishment and reference to its website are admitted. The remaining allegations contained in paragraph 3 constitute conclusions of law, they are denied and no further response is required.

4. Admitted. By way of further answer, Mr. Garvin is no longer a party to this action.

5. It is admitted that Defendant is supervised by a Board of Trustees. Defendants John and Jane Doe Numbers 1-21 are no longer parties to this action.

JURISDICTION AND VENUE

6. through 8. Denied. The allegations contained in paragraphs 6 through 8 constitute conclusions of law, they are denied and no further response is required.

FULFILLMENT OF TITLE VII CONDITIONS

9. Denied. The allegations contained in paragraph 9 constitute conclusions of law, they are denied and no further response is required.

FACTUAL ASSERTIONS

10. Admitted in part, denied in part. It is admitted that Plaintiff's resume reflects her background as stated. It is denied that Plaintiff was "key" to Waverly attaining a "Best Place to Work" designation.

11. Denied. The content of Waverly's website is a writing, the language of which speaks for itself.

12. Denied. After reasonable investigation, Defendant is without knowledge or information to form a belief as to the truth of said averments, they are denied and no further response is required.

13. Admitted in part, denied in part. It is admitted that Plaintiff received performance evaluations scores that generally reflected a satisfactory performance level. It is denied that her

job performance resulted in a particular level of reduced job turnover. Plaintiff's responsibilities included risk control and oversight of workers compensation claims; however, her job performance had nothing to do with the manner in which the workers compensation insurer distributed dividends to Waverly over the implicated years. It is admitted that Plaintiff was responsible for employee training, but it is denied that there was any quantifiable correlation between that aspect of her job and saving Waverly money. By way of further answer, Waverly would hope that its Vice-President of Human Resources would treat people fairly; however, due to the events leading up to her termination, Waverly management had justified concerns about her continued ability to do so. Concerning the allegations as to Mr. Garvin, who is no longer a party to this action, Waverly is unclear as to what Plaintiff is talking about and therefore cannot respond. The remaining allegations contained in paragraph 13 are denied and no further response is required.

14. Denied. In light of the fact that Plaintiff does not specify the alleged protesting of various discriminatory and questionable practices by Mr. Garvin it is impossible to respond. If Plaintiff is referencing an instance when she advised Mr. Garvin that a female employee was upset about not having a company car, after investigation with the implicated employee, it was determined that on the contrary she was not upset about the absence of a company car. Further, if Plaintiff is referencing the time she advised Mr. Garvin that the female CFO was allegedly "harassing her", Mr. Garvin promptly commenced an investigation of the matter. Plaintiff made clear that although she had consulted an attorney, she requested that Mr. Garvin take no action. Plaintiff also stated that she would never sue Waverly. Ultimately the female CFO was terminated for reasons unrelated to Plaintiff's interactions with her. To the extent that the allegations contained in paragraph 14 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

15. Denied. After reasonable investigation, Defendant is without knowledge or information to form a belief as to the truth of said averments, they are denied and no further response is required.

16. Admitted.

17. Denied. The text of the Tweet at issue is a writing, the language of which speaks for itself.

18. Admitted in part, denied in part. It is admitted that after Mr. Garvin's initial meeting with Plaintiff that he left to attend a conference in Florida and did not return to the office until Monday, September 26, 2016. It is denied that during their meeting that Plaintiff was dumbfounded. It is admitted that she appeared distraught. In light of the fact that Plaintiff immediately asked Mr. Garvin "Am I going to lose my job?" it is difficult to believe she was dumbfounded. Mr. Garvin replied that he could not give her any promise as to whether she would be fired and at no time did he tell her she should not be worried. Mr. Garvin never categorized the situation as a mere nuisance. By way of further answer, following this meeting Plaintiff immediately removed the subject Tweet.

19. Admitted in part, denied in part. It is admitted that Plaintiff immediately deleted the Tweet following the meeting with Mr. Garvin. Waverly is without knowledge or information sufficient to form a belief as to whether there were any comments, sharing and/or responses and such allegations are denied. Waverly did, however, receive the anonymous letter raising concerns about Plaintiff's conduct.

20. Admitted in part, denied in part. It is admitted that the meeting occurred towards the end of the day. It is denied that Plaintiff attempted to see Mr. Garvin several times or that he

was evasive. By way of further answer, Mr. Garvin was in the office all day and at no time did Plaintiff leave a message with his assistant for Mr. Garvin to contact Plaintiff.

21. Denied. Mr. Garvin did not state that he was upset. Mr. Garvin expressed concern about Plaintiff's actions and informed her that the matter was reviewed by Waverly's Human Resources Committee and outside legal counsel. At no time did Mr. Garvin state that the Human Resources Committee and the full Board of Trustees had voted unanimously to terminate her employment based upon a violation of Defendant's Social Media Policy. Mr. Garvin advised her that the violation of the Social Media Policy was an aspect of the basis for her termination but he also referenced her lack of judgment and conduct as being generally inappropriate and unbecoming of a Vice-President of Human Resources.

22. Denied. After reasonable investigation, Waverly is without knowledge or information to form a belief as to Plaintiff's rationale for questioning the matters stated in paragraph 22 of Plaintiff's First Amended Complaint. It is denied that Waverly failed to investigate and/or to consider the matter fully. To the extent that the allegations contained in paragraph 22 of the Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

23. Admitted. It is admitted that Plaintiff begged for her job and asked to be heard by the Board of Trustees. Mr. Garvin communicated that the decision was final.

24. Admitted. It is admitted that Plaintiff asked to resign and to stay for an additional 30 days. Waverly denied this request.

25. Denied. Mr. Garvin never made such a statement. By way of further answer, it is denied that Mr. Garvin made such a statement to any others as which Plaintiff without justification continues to insist upon.

26. Admitted in part, denied in part. It is admitted that Mr. Garvin informed Plaintiff that there were people available to help her remove her belongings and to accompany her for this purpose. Initially Plaintiff went to her office without any escort. The two Waverly employees met her in her office so as not to draw attention to her or to embarrass her. Further, Plaintiff had already confided in a Waverly employee that she had cleaned out her office while Mr. Garvin was away at his conference. Plaintiff was also offered a ride home from the office. It is a typical procedure that others accompany an individual after they have been terminated. At no time did Plaintiff express any concern about her reputation in the community nor did she say she was worried about her reputation. Interestingly, Plaintiff is the one who after the meeting with Mr. Garvin and Dick Bauer ("Mr. Bauer") interacted with other Waverly employees informing them about what she had done and admitting to the fact that she made a mistake. Mr. Garvin never publicized the circumstances underlying Plaintiff's termination and announced her departure in very generic terms to the community stating that she would simply no longer be employed at Waverly. Plaintiff's categorization of her "escort" from Waverly's administrative offices is misconstrued and overdramatized where her car was located in a private area no more than 50 feet from her office. The individuals that accompanied her were present to assist her with carrying her things and to ensure that she was not taking company property, a very typical manner of proceeding when an employee is terminated.

27. Admitted in part, denied in part. It is admitted only that Mr. Garvin met with the Senior Management Team to advise that Plaintiff would no longer be employed at Waverly and in the interim human resource related questions should be directed to Mr. Garvin. The remaining allegations contained in paragraph 27 of Plaintiff's First Amended Complaint are denied and no further response is required.

28. Denied. It is admitted only that Mr. Garvin informed certain vendors of Waverly that Plaintiff would no longer be employed by Waverly but at no time did he specify the reasons. To the best of Mr. Garvin's recollection, he made these calls the day after Plaintiff's termination. The remaining allegations contained in paragraph 28 of Plaintiff's First Amended Complaint are denied and no further response is required.

29. Denied. It is denied that at any time Mr. Garvin advised Meg Guenveur about the circumstances involving Plaintiff's termination. Waverly has no knowledge of a telephone conversation between Plaintiff and Ms. Guenveur and said allegations are denied.

30. Denied. Waverly has no knowledge of a telephone conversation between Bill Macguire and Plaintiff, said allegations are denied and no further response is required.

31. Denied. It is denied that Mr. Garvin defamed Plaintiff to anyone. By way of further answer, the defamation claim in this matter was dismissed with prejudice by this Honorable Court.

32. Denied. Waverly has no knowledge concerning a telephone conversation that allegedly occurred between Plaintiff and an unidentified housekeeping employee of Waverly, the allegation is denied and no further response is required.

33. Denied. It is denied that Mr. Garvin defamed Plaintiff to the Board of Trustees and/or claimed she was a racist. By way of further answer, the full Board of Trustees did not approve the termination but would have learned about the circumstances shortly thereafter.

34. Denied. Waverly's response to paragraph 33, above, is incorporated by reference as if set forth at length.

35. Denied. By way of further answer, the defamation claim against Mr. Garvin and the Board of Trustees (John and Jane Doe Numbered 1-21) has been dismissed with prejudice by this Honorable Court.

36 and 37. Any and all assertions made in the context of the Unemployment Compensation proceeding are privileged and it is denied that anyone at any time ever claimed that Plaintiff was a racist or that this was a basis for her termination. By way of further answer, the defamation claim in this action was dismissed with prejudice.

38. Denied. Plaintiff's Tweet was in writing, the language of which speaks for itself. The allegations concerning the characterization of the Tweet are likewise denied.

39. Denied. Defendant's Social Media Policy is a writing, the language of which speaks for itself and said allegations are denied.

40. Denied. Defendant's Social Media Policy is a writing, the language of which speaks for itself and said allegations are denied.

41. Denied. Plaintiff admitted to posting the subject Tweet. Then during the meeting terminating her employment Plaintiff suddenly started saying that she didn't do it and someone else did it. Then, remarkably when filing for unemployment compensation, Plaintiff claimed that her husband posted the subject Tweet. Even more interesting is the fact that this new theory is not alleged in any complaint filed in the above action nor in the voluminous letter from Plaintiff's counsel reciting Plaintiff's version of the events underlying her separation from employment. It is denied that progressive discipline is required by Waverly or any other employer for that matter.

42. Denied. The Social Media Policy is a writing, the language of which speaks for itself. Waverly admits that it does not discriminate against its employees.

43. Admitted in part, denied in part. It is admitted that the former Board Chairman sent emails that were political in nature to a small group of people, including Plaintiff, with whom he believed he shared similar political beliefs. The remaining allegations contained in paragraph 43 of Plaintiff's First Amended Complaint are denied.

44. Denied. After reasonable investigation, Waverly is unaware of what Plaintiff means by an alleged hostile environment and her supposed advocacy. To the extent that the allegations contained in paragraph 44 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

45. Denied. After reasonable investigation, Waverly is unclear as to what Plaintiff is referencing about her supposed challenges directed towards Mr. Garvin and the alleged "male dominated empire". To the extent that the allegations contained in paragraph 45 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

46. Admitted.

47. Admitted in part, denied in part. It is admitted only that although she was making more than \$110,000.00, Meredith Feher, Senior Vice President of Health Care Service, told Plaintiff that if she was unhappy with her compensation she should speak to Mr. Garvin. After doing so, Mr. Garvin increased Plaintiff's compensation as well as others to achieve a higher compensation ratio as determined with the assistance of a Human Resources Compensation Consultant. Defendant has always used the Compensation Consultant's guidelines and Plaintiff was above market value. Senior management received increases over a 3 year period and to get senior management into a compensation ration between 1.02 and 1.06. The remaining allegations contained in paragraph 47 of Plaintiff's First Amended Complaint are denied.

48. Denied. It is denied that there was an atmosphere of male superiority at Waverly or that Mr. Garvin, as its CEO, engaged in conduct or behavior that was objectionable to female members of the leadership team. Further, at no time were such complaints brought against Mr. Garvin and Plaintiff is making the allegations contained in her First Amended Complaint solely

for the purpose of personally attacking Mr. Garvin without any justification or legal basis whatsoever. To the extent that the allegations contained in paragraph 48 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

49. Denied. It is denied that Mr. Garvin engaged in the conduct claimed in paragraph 49 of Plaintiff's First Amended Complaint. Further, at no time were such complaints brought against Mr. Garvin and Plaintiff is making the allegations contained in her First Amended Complaint solely for the purpose of personally attacking Mr. Garvin without any justification or legal basis whatsoever. To the extent that the allegations contained in paragraph 49 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

50. Denied. Mr. Garvin requested a meeting with Plaintiff because she was demonstrating an odd demeanor (i.e. appeared overly sorrowful) in the workplace. After Mr. Garvin met with her and found out she was upset about her bonus being less than others on the management team, he explained the correlation for others earning more. Further, Mr. Garvin made suggestions to Plaintiff about how she could increase her salary including a Nursing Home Administrator Licensing certification program which Defendant paid for (and gave Plaintiff permission to miss work to attend) but Plaintiff failed to ever complete without explanation. Also, even prior to Mr. Garvin taking on the role as CEO, Defendant had engaged a Compensation Consultant to review employee salaries and after doing so Plaintiff and others (including females) received increases in their salaries. The remaining allegations and Plaintiff's categorization are denied and no further response is required.

51. Denied. It is denied that Plaintiff's bonus was the smallest in comparison to other senior leadership management members since certain individuals received no bonus at all. The bonus is discretionary and in Mr. Garvin's opinion, others had taken actions that directly attributed to Defendant's success in a much different manner and with more impact than in comparison to Plaintiff. At no time did her gender or age motivate his decision-making. The remaining allegations are denied and no further response is required.

52. Denied. It is denied that Mr. Garvin reacted unprofessionally towards Plaintiff when in fact he offered her words of encouragement and advised her as to how she could make more money if she so desired. Defendant's responses to paragraphs 47, 50 and 51, above, are incorporated herein by reference as if set forth at length.

53. Denied. Defendant incorporates by reference its response to paragraph 14, above, as if set forth at length.

54. Denied. It is denied that Plaintiff was subjected to a hostile work environment as a woman or that Defendant favored Mr. Supper, a male. To the extent that the allegations contained in paragraph 54 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

55. Denied. Plaintiff would advise Mr. Garvin she was upset about Mr. Supper talking about gambling in front of staff. There existed no reason to believe that he was doing anything illegal or inappropriate and he performed his job duties very well.

56. Admitted in part denied in part. It is admitted only that an unfortunate issue occurred without Mr. Supper's knowledge, involving his son and the company car. Thereafter, the company car was taken away from Mr. Supper in an overabundance of caution. Defendant's agents didn't have a trust issue as to Mr. Supper in making this decision.

57. Denied.

58. Denied. Plaintiff had nothing to do with Mr. Garvin removing the company car from Mr. Supper. The fact that a female member of management did not have a company car was never raised by anyone, including the implicated employee who was allegedly took issue with the same. The CEO and CFO have always had a company car. The female CFO prior to Mr. Supper had a company issued car.

59. Admitted in part, denied. It is admitted only that on occasion when passionate about a topic or point, Mr. Supper may have a tendency to "speak over someone" but it is in no way gender specific. The remaining allegations in paragraph 59 of Plaintiff

60. Denied. It is denied that Mr. Garvin told Plaintiff not to file a worker's compensation claim. In fact, he was not even present on the day when Plaintiff suffered an asthma attack after being in the attic of a building. Plaintiff was assessed by a nurse on premises but refused to go to the hospital. To the extent that the allegations contained in paragraph 60 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

61. Denied. It is denied that Defendant has permitted or encourages a hostile and discriminatory environment through Mr. Garvin's actions and inactions or on any other basis. To the extent that the allegations contained in paragraph 63 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

62. Denied. It is denied that Defendant's decision to terminate Plaintiff's employment was discriminatory on the basis of gender or any other basis. It is denied that Waverly favors males in any respect. To the extent that the allegations contained in paragraph 62 of Plaintiff's First

Amended Complaint constitute conclusions of law, they are denied and no further response is required. By way of further answer, Plaintiff's replacement is also in the protected class for age.

63. Denied. Any and all assertions made in the context of the Unemployment Compensation proceeding are privileged and it is denied that anyone at any time ever claimed that Plaintiff was a racist or that this was a basis for her termination. It is denied that Defendant retaliated against Plaintiff. To the extent that the allegations contained in paragraph 63 of Plaintiff's First Amended Complaint constitute conclusions of law, they are denied and no further response is required.

COUNT I

ALLEGED VIOLATION OF TITLE VII – GENDER

(Kathleen Jungclaus v. Waverly Heights, Ltd.)

64. Defendant incorporates its response to paragraphs 1 through 63 by reference as if set forth at length.

65 through 74. Denied. The allegations contained in paragraphs 65 through 74 of Plaintiff's First Amended Complaint constitute conclusion of law, they are denied and no further response is required. By way of further answer, it is denied that Waverly discriminated against Plaintiff on any basis at any time, maintained a hostile work environment and/or retaliated against her.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Jungclaus, and award costs in favor of Defendant.

COUNT II

ALLEGED VIOLATION OF TITLE VII – POST EMPLOYMENT RETALIATION

(Kathleen Jungclaus v. Waverly Heights, Ltd.)

75. Defendant incorporates its response to paragraphs 1 through 74 by reference as if set forth at length.

76 through 81. Denied. The allegations contained in paragraphs 76 through 81 of Plaintiff's First Amended Complaint constitute conclusion of law, they are denied and no further response is required. By way of further answer, it is denied that Waverly discriminated against Plaintiff on any basis at any time, maintained a hostile work environment and/or retaliated against her.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Jungclaus, and award costs in favor of Defendant.

COUNT III

ALLEGED VIOLATION OF THE ADEA

(Kathleen Jungclaus v. Waverly Heights, Ltd.)

82. Defendant incorporates its response to paragraphs 1 through 81 by reference as if set forth at length.

83 through 93. Denied. The allegations contained in paragraphs 83 through 93 of Plaintiff's First Amended Complaint constitute conclusion of law, they are denied and no further response is required. By way of further answer, it is denied that Waverly discriminated against

Plaintiff on any basis at any time, maintained a hostile work environment and/or retaliated against her.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Junglaus, and award costs in favor of Defendant.

COUNT IV

ALLEGED VIOLATION OF THE PHRC – GENDER AND AGE

(Kathleen Junglaus v. Waverly Heights, Ltd.)

94. Defendant incorporates its response to paragraphs 1 through 93 by reference as if set forth at length.

95 through 98. Denied. The allegations contained in paragraphs 95 through 98 of Plaintiff's First Amended Complaint constitute conclusion of law, they are denied and no further response is required. By way of further answer, it is denied that Waverly discriminated against Plaintiff on any basis at any time, maintained a hostile work environment and/or retaliated against her.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Junglaus, and award costs in favor of Defendant.

COUNT V

DEFAMATION

(Kathleen Jungclaus v. Thomas P. Garvin, Waverly Heights, Ltd., and John and Jane Doe Numbers 1-21)

99. Defendant incorporates its response to paragraphs 1 through 98 by reference as if set forth at length.

100 through 109. Denied. No response required in light of the Order dated April 9, 2018. On April 9, 2018, this Honorable Court granted Defendants' Motion to Dismiss whereby Count V (Defamation) and Count VI (Negligent Supervision of Thomas Garvin) were dismissed with prejudice. As a result, neither Thomas P. Garvin nor John and Jane Doe Numbers 1-21 (Waverly's Board of Trustees) are parties to this action.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Jungclaus, and award costs in favor of Defendant.

COUNT VI

NEGLIGENT SUPERVISION OF THOMAS GARVIN

(Kathleen Jungclaus v. Waverly Heights, Ltd. and John and Jane Doe Numbers 1-21)

110. Defendant incorporates its response to paragraphs 1 through 109 by reference as if set forth at length.

111 through 113. Denied. No response required in light of the Order dated April 9, 2018. On April 9, 2018, this Honorable Court granted Defendants' Motion to Dismiss whereby Count V (Defamation) and Count VI (Negligent Supervision of Thomas Garvin) were dismissed

with prejudice. As a result, neither Thomas P. Garvin nor John and Jane Doe Numbers 1-21 (Waverly's Board of Trustees) are parties to this action.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Jungclaus, and award costs in favor of Defendant.

RELIEF REQUESTED

Defendant denies the Relief Requested by Plaintiff in paragraphs (a) and (b), including subparagraphs therein as conclusions of law, whereby no further response is required.

DEFENDANT'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth viable causes of action under Title VII, the ADEA and/or the PHRA for discrimination, hostile work environment and/or retaliation/post termination retaliation on the basis of age, gender or any other basis protected under federal and state law.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to establish that she suffered adverse employment action motivated by or resulting from discrimination and/or retaliation by Defendant

THIRD AFFIRMATIVE DEFENSE

Defendant had a legitimate business reason when it terminated Plaintiff's employment.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent that the allegations of the First Amended Complaint are not set forth in her administrative charge of discrimination.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff suffered any damages, the same being denied, she has failed to mitigate her damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the after acquired evidence doctrine.

SEVENTH AFFIRMATIVE DEFENSE

Defendant, by and through its agents, at all times relevant hereto acted in good faith and complied with applicable laws.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred where Defendant's decision to terminate her employment was on a basis other than Plaintiff's age and/or gender.

WHEREFORE, Defendant, Waverly Heights, Ltd., respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, Kathleen M. Junglaus, and award costs in favor of Defendant.

EASTBURN AND GRAY, P.C.

Dated: 4/17/18

By: 

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Appendix 1171

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 KATHLEEN M. JUNGCLAUS, : CIVIL ACTION
5 :
6 Plaintiff :
7 :
8 v. :
9 :
10 WAVERLY HEIGHTS LTD., :
11 THOMAS P. GARVIN and John :
12 and Jane Doe Numbers 1 :
13 through 23, :
14 :
15 Defendants : NO. 17-cv-4462

16 - - -

17 Monday, November 26, 2018

18 - - -

19 Continued oral deposition of
20 THOMAS P. GARVIN, taken at the law offices of
21 Eastburn and Gray, PC, 60 East Court Street,
22 Doylestown, Pennsylvania 18901, beginning at
23 1:56 p.m., before Cheryl L. Goldfarb, a
24 Registered Professional Reporter, Notary
 Public, and an approved reporter of the United
 States District Court.

 - - -

 VERITEXT LEGAL SOLUTIONS
 MID-ATLANTIC REGION
 1801 Market Street - Suite 1800
 Philadelphia, Pennsylvania 19103

<p style="text-align: right;">Page 200</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LAW OFFICE OF MARK D. SCHWARTZ</p> <p>4 BY: MARK D. SCHWARTZ, ESQUIRE</p> <p>5 300 Sandcastle Drive</p> <p>6 Bryn Mawr, Pennsylvania 19010</p> <p>7 610.525.5534</p> <p>8 MarkSchwartz6814@gmail.com</p> <p>9 Representing the Plaintiff</p> <p>10</p> <p>11 EASTBURN and GRAY, PC</p> <p>12 BY: GRACE M. DEON, ESQUIRE</p> <p>13 60 East Court Street</p> <p>14 Doylestown, Pennsylvania 18901</p> <p>15 215.345.7000</p> <p>16 gdeon@eastburngray.com</p> <p>17 Representing the Defendants</p> <p>18 and the Witness</p> <p>19</p> <p>20 ---</p> <p>21 ALSO PRESENT:</p> <p>22</p> <p>23 KATHLEEN JUNGCLAUS</p> <p>24 RICHARD E. BAUER</p> <p>25</p> <p>26 ---</p>	<p style="text-align: right;">Page 202</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>4 Page Line Page Line</p> <p>5 214 24 215 7</p> <p>6</p> <p>7</p> <p>8 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>9 Page Line Description</p> <p>10 242 1-4 Records of compensation level</p> <p>11 With respect to Robert</p> <p>12 Supper and Kathy Jungclaus</p> <p>13</p> <p>14</p> <p>15 STIPULATIONS</p> <p>16 Page Line</p> <p>17 (Pursuant to Federal Rules of Civil Procedure)</p> <p>18</p> <p>19</p> <p>20 QUESTIONS MARKED</p> <p>21 Page Line</p> <p>22 (None)</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 201</p> <p>1 INDEX</p> <p>2 ---</p> <p>3 WITNESS: THOMAS P. GARVIN</p> <p>4 QUESTIONED BY: PAGE:</p> <p>5 MR. SCHWARTZ 203</p> <p>6 ---</p> <p>7 EXHIBITS</p> <p>8 NUMBER DESCRIPTION MARKED FOR ID</p> <p>9 (No exhibits)</p> <p>10 ---</p> <p>11 PREVIOUSLY MARKED EXHIBITS</p> <p>12 NUMBER.....PAGE</p> <p>13 TG-6.....217</p> <p>14 TG-7.....217</p> <p>15 Summers 1.....249</p> <p>16 Bauer 4.....250</p> <p>17 Bauer 5.....252</p> <p>18 Bauer 6.....253</p> <p>19 Bauer 7.....254</p> <p>20 Bauer 8.....256</p> <p>21 Bauer 9.....257</p> <p>22 Bauer 10.....258</p> <p>23 ---</p> <p>24</p>	<p style="text-align: right;">Page 203</p> <p>1 (It is hereby stipulated and</p> <p>2 agreed by and between counsel that</p> <p>3 reading, signing, sealing, certification</p> <p>4 and filing are waived; and that all</p> <p>5 objections, except as to the form of the</p> <p>6 question, are reserved until the time of</p> <p>7 trial.)</p> <p>8 ---</p> <p>9 THOMAS P. GARVIN, after having</p> <p>10 been duly sworn/affirmed, was examined</p> <p>11 and testified as follows:</p> <p>12 ---</p> <p>13 CONTINUED EXAMINATION</p> <p>14 ---</p> <p>15 BY MR. SCHWARTZ:</p> <p>16 Q. Mr. Garvin, we're continuing</p> <p>17 your deposition, and hopefully we'll get you</p> <p>18 out of here in a couple hours.</p> <p>19 You sat here through</p> <p>20 Mr. Billig's deposition, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Have you had any conversation</p> <p>23 with him since we produced to you the</p> <p>24 transcript of his communications with my</p>

2 (Pages 200 - 203)

THOMAS P. GARVIN

<p style="text-align: right;">Page 204</p> <p>1 client?</p> <p>2 A. No, I have not.</p> <p>3 Q. He did meet with your lawyer,</p> <p>4 though, correct?</p> <p>5 A. Yes, he did.</p> <p>6 Q. Were you present?</p> <p>7 A. I was not.</p> <p>8 Q. Did he meet with HR as well? I</p> <p>9 believe he said he did.</p> <p>10 A. The vice president of human</p> <p>11 resources was in the room with our attorney</p> <p>12 when they met.</p> <p>13 Q. As you sit here today, did you</p> <p>14 learn anything new about who may have written</p> <p>15 this letter?</p> <p>16 A. No, I did not.</p> <p>17 Q. You were here through</p> <p>18 Mr. Bauer's deposition as well, correct?</p> <p>19 A. I was, yes.</p> <p>20 Q. As is your right.</p> <p>21 He mentioned something about</p> <p>22 bubbling up from some people, some discussion</p> <p>23 bubbling.</p> <p>24 Remember that?</p>	<p style="text-align: right;">Page 206</p> <p>1 Q. Who was --</p> <p>2 A. And it's hard to --</p> <p>3 Q. I'm sorry. Go ahead.</p> <p>4 A. It's hard to explain to your</p> <p>5 African-American staff, when, you know, clearly</p> <p>6 it was something that they were -- where they</p> <p>7 were separated out from everybody else. So it</p> <p>8 put me in a very difficult position of having</p> <p>9 to try to explain why our vice president of</p> <p>10 human resources would take it upon herself to</p> <p>11 do such a thing.</p> <p>12 Does that clarify it enough for</p> <p>13 you?</p> <p>14 Q. Absolutely.</p> <p>15 A. Good.</p> <p>16 Q. Any of those same</p> <p>17 African-Americans ever have an opportunity to</p> <p>18 see Mr. Soltis' e-mail?</p> <p>19 A. I would have no idea.</p> <p>20 Q. Can you imagine what their</p> <p>21 reaction would be?</p> <p>22 MS. DEON: Objection.</p> <p>23 A. Well, I have not seen the</p> <p>24 e-mails.</p>
<p style="text-align: right;">Page 205</p> <p>1 A. I do.</p> <p>2 Q. Bubbling discussions. And then</p> <p>3 he mentioned something about Waverly Care.</p> <p>4 Do you remember that?</p> <p>5 A. Yes.</p> <p>6 Q. What do you know about the</p> <p>7 bubbling discussions with respect to Waverly</p> <p>8 Care?</p> <p>9 A. Yes. So what Mr. Bauer is</p> <p>10 referring to is that after Kathy was</p> <p>11 terminated, when the word circulated out that</p> <p>12 she had been terminated, it was brought to my</p> <p>13 attention that pretty much the entire</p> <p>14 administrative team in Waverly Care Associates</p> <p>15 had been aware of the tweet. And the</p> <p>16 African-American staff who work in the</p> <p>17 administrative offices of Waverly Care were</p> <p>18 extremely angry and extremely upset by the</p> <p>19 content of the tweet.</p> <p>20 So that's -- he had his order a</p> <p>21 little bit mixed up. But that's exactly how it</p> <p>22 went down, because apparently they were privy</p> <p>23 to it before it had come to my attention via</p> <p>24 the anonymous letter.</p>	<p style="text-align: right;">Page 207</p> <p>1 MS. DEON: Calls for</p> <p>2 speculation.</p> <p>3 BY MR. SCHWARTZ:</p> <p>4 Q. You sat here. You saw the</p> <p>5 e-mails. You saw the cartoons of Obama and so</p> <p>6 forth, correct?</p> <p>7 A. Actually, I was --</p> <p>8 MS. DEON: Objection.</p> <p>9 A. (Continuing) -- sitting at the</p> <p>10 end of the table and did not look at the</p> <p>11 e-mails.</p> <p>12 BY MR. SCHWARTZ:</p> <p>13 Q. I really hope I don't have to go</p> <p>14 through them all again, but be that as it may.</p> <p>15 Who is the head of Waverly Care?</p> <p>16 A. Her name is Patty Rodgers,</p> <p>17 R-o-d-g-e-r-s.</p> <p>18 Q. Does she get along with my</p> <p>19 client?</p> <p>20 MS. DEON: Objection.</p> <p>21 BY MR. SCHWARTZ:</p> <p>22 Q. Have they had a good rapport?</p> <p>23 A. They both complained about each</p> <p>24 other from time to time.</p>

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THOMAS P. GARVIN

<p style="text-align: right;">Page 208</p> <p>1 Q. What did Ms. Rodgers complain 2 about my client? What did she say? 3 A. She had, you know, told me that 4 there were trust issues between the two of them 5 over past history, of which she didn't share. 6 Q. What did my client say about 7 Ms. Rodgers? 8 A. Pretty much the same thing, that 9 there were trust issues between the two of them 10 that were related to long-gone history. 11 They really didn't work together 12 very often. They kept each other very much at 13 arm's length because of whatever their history 14 was with each other. 15 Q. Would Ms. Rodgers have 16 interacted with Ms. Summers? 17 A. She may have from time to time, 18 yes. 19 Q. Do you have an opinion whether 20 Ms. Rodgers wrote the anonymous letter? 21 MS. DEON: Objection. Calls for 22 speculation. 23 You can answer. 24 A. I have no idea or opinion on who</p>	<p style="text-align: right;">Page 210</p> <p>1 letter, remember, which you were examined over 2 and which was not one of your favorite pieces 3 of correspondence in your career. 4 Do you remember my letter? 5 A. Oh, yes. Yes. 6 Q. Do you remember your testimony 7 about where that letter was circulated? 8 A. Yes, I do. 9 Q. Is Mr. Bauer a member of the 10 executive committee? 11 A. I believe he was, yes, indeed. 12 Q. Yes. And you said it made its 13 way to the executive committee and to any other 14 trustee who was interested in reading it. 15 Isn't that your testimony? 16 A. That's absolutely true. 17 Q. So would Mr. Bauer have received 18 it? 19 A. He did. 20 Q. As you sit here, is there 21 anything else that may have jumped out about 22 the accuracy or inaccuracy of his testimony? 23 A. So just to clarify, because I 24 know he would certainly like to clarify how it</p>
<p style="text-align: right;">Page 209</p> <p>1 wrote the letter. 2 BY MR. SCHWARTZ: 3 Q. Since your last sitting here, 4 did you take any opportunity to find out who 5 wrote the letter? Did you make any efforts to 6 find that out? 7 A. No, I did not. Because to me, 8 the content of the letter speaks for itself. 9 Who wrote the letter to me is somewhat 10 irrelevant. 11 I know we'd all like to know who 12 wrote the letter to compliment them on their 13 writing abilities for sure. And the 14 articulation of exactly why your client was 15 terminated from our employment is very well 16 laid out in that letter. But who wrote it is 17 not really of that great interest to me. 18 Q. Did you ever ask anybody to 19 write it? 20 A. Absolutely not. That's not my 21 style. That's not my values. And I would 22 never do something like that. 23 Q. You sat here through Mr. Bauer's 24 testimony and he was directed to my initial</p>	<p style="text-align: right;">Page 211</p> <p>1 was handled. When your letter was received, it 2 was received through our attorney's office. 3 Q. Right. 4 A. And our attorney then filtered 5 it to me. And then we subsequently did share 6 it with the entire executive committee in an 7 executive committee meeting. And it was read 8 by the members of the executive committee. 9 And then we had our attorney 10 come to a full board meeting, where we 11 discussed the letter, the content, and the 12 direction that your client was positioning on 13 this thing. And we offered it to any board 14 member who would have liked to have seen it or 15 read it, to read it. 16 Because, quite frankly, your 17 letter is, as I said the last time, pretty much 18 100 percent false, exaggerated, inaccurate. 19 And whether you know it or not, your client 20 knows it. 21 So we did share it the way we 22 shared it. You asked me a question. I'm 23 answering you honestly. 24 Q. Go for it.</p>

4 (Pages 208 - 211)

THOMAS P. GARVIN

<p style="text-align: right;">Page 212</p> <p>1 A. So that's how we shared the 2 content of your letter with everybody. 3 Q. Okay. 4 A. So Dick didn't have all the 5 recollection that I did. But believe me, I 6 remember it very well. 7 MR. SCHWARTZ: All right. I 8 don't even remember the question. Let me 9 just look for something else. 10 MS. DEON: For the record, just 11 so we're clear when this gets looked at 12 later, the letter we're speaking of is 13 November -- why don't we get an exhibit 14 on that. 15 MR. SCHWARTZ: It's Exhibit 16 Bauer 2. 17 MS. DEON: And the date of the 18 letter is November 6th? 19 MR. SCHWARTZ: Eighth. 20 MS. DEON: Eighth, 2016. 21 BY MR. SCHWARTZ: 22 Q. Did you ever fire any employees 23 whom you felt were extorting money from other 24 people? Have you ever had an occasion to do</p>	<p style="text-align: right;">Page 214</p> <p>1 Q. Well, let me ask you this: If 2 he had insisted upon the payment of money from 3 someone for information, that wouldn't give you 4 pause about whether he should continue to be 5 employed? 6 A. That's up to your client, 7 really. 8 Q. No, no. My client doesn't 9 employ him. You do. 10 A. I don't know anything about 11 that. And I -- the context of that 12 conversation between the two of them, that's 13 between them. And I really don't, you know, 14 have an opinion on if he was trying to extort 15 money. Who knows what he wanted for it. And 16 I'm not about to sit here and guess on that. 17 Because I want -- that is -- 18 Q. Are you going to investigate it? 19 A. That was something they did on 20 their own time. 21 Q. And that's okay? To ask 22 somebody for money on their own time is okay? 23 MS. DEON: Objection. 24 Don't answer the question.</p>
<p style="text-align: right;">Page 213</p> <p>1 that? 2 A. Not that I recall, no. 3 Q. Did anything that Mr. Billig 4 said give you pause about whether he should 5 continue to be employed at Waverly? 6 MS. DEON: Objection to the 7 extent that he is not a lawyer, so the 8 use of the word "extortion," or 9 suggestion of whether someone committed 10 extortion. But he can answer. 11 A. Yeah, the relationship between 12 your client and a maintenance man at our 13 facility, I know nothing about. I have no 14 reason to be involved in it. I have no opinion 15 on what their conversations were about. 16 And I'm not about to sit here 17 and try to guess on what the content of what he 18 meant or what she meant in that very awkward 19 exchange that they had on between vanishing 20 messages on Facebook and whatever else they 21 were using. I -- that is completely between 22 the two of them. It has nothing to do, as far 23 as I can see, with his employment status at 24 Waverly.</p>	<p style="text-align: right;">Page 215</p> <p>1 BY MR. SCHWARTZ: 2 Q. When one knows there are court 3 proceedings, is that okay? 4 MS. DEON: Objection. 5 MR. SCHWARTZ: Are you 6 instructing him not to answer? 7 MS. DEON: I am. 8 MR. SCHWARTZ: Well, for the 9 record, I'd like to ask you to conduct an 10 investigation and to fire him. Okay? 11 Off the record. 12 --- 13 (Whereupon, a discussion was 14 held off the record.) 15 --- 16 BY MR. SCHWARTZ: 17 Q. Have you provided all of the 18 Soltis e-mails that I requested? 19 A. Yes. 20 Q. Have you gone back to check to 21 see if any of those were forwarded from 22 recipients of his e-mail who were Waverly 23 employees? 24 A. We had Pannha Prak, our IT --</p>

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THOMAS P. GARVIN

<p style="text-align: right;">Page 216</p> <p>1 head of IT go and do a thorough -- thorough 2 search. 3 Q. This is after your last 4 deposition? Was it after we last were 5 together? Did he look at it again? 6 A. It was -- the timing was when 7 you requested it via, I think, a second set of 8 Interrogatories that came. 9 Q. Right. 10 A. So we went back and did another 11 search. 12 Q. Did you find anything? 13 A. Just what was produced. And 14 really -- 15 MS. DEON: I can represent that 16 there are Janet Thompson e-mails that 17 contain a lot of business things as well. 18 MR. SCHWARTZ: Business stuff. 19 And we haven't resolved that yet. 20 MS. DEON: It's this big, and 21 I'm going through it. 22 MR. SCHWARTZ: Fine. 23 MS. DEON: And I just actually 24 gave you a confidentiality agreement for</p>	<p style="text-align: right;">Page 218</p> <p>1 Board of Trustees. Mr. Garvin communicated 2 that the decision was final." 3 Is that what your answer is? 4 A. That is correct. 5 Q. And that's a response. What did 6 you mean by "final decision"? What did you 7 mean by that? 8 A. That, unfortunately, we couldn't 9 change what the decision of the committee was 10 based on the facts as we -- you know, as we had 11 investigated and as the committee saw them. 12 Q. So "as the committee saw them," 13 you're talking about the HR committee? 14 A. No. The human resources 15 committee in conjunction with counsel and, you 16 know, every -- everyone involved in the human 17 resources committee. 18 Q. The executive committee, too? 19 A. No. The human resources 20 committee. 21 Q. Okay. And if you go to 25. "At 22 this meeting, Defendant Garvin then told 23 Plaintiff, 'I don't want you to think that you 24 are a racist. That's not the case.' This</p>
<p style="text-align: right;">Page 217</p> <p>1 your review with a letter. And there's 2 also a Soltis letter in here explaining 3 that. 4 MR. SCHWARTZ: All right. Let's 5 go back and do this Amended Complaint, 6 which I'm glad I brought extra copies of. 7 MS. DEON: These have already 8 been marked. The first Amended is TG-6. 9 And the Answers are TG-7. 10 BY MR. SCHWARTZ: 11 Q. If you turn to Paragraph 23 of 12 the Complaint and of the Answer. Do you see 13 the two of them? And then go to 23 on the 14 Answer. All right? Are we good? 15 Paragraph 23, the Complaint 16 reads, "Without success, Plaintiff begged for 17 her job, asking Messrs. Bauer and Garvin to 18 reconsider and/or to allow her to discuss the 19 situation with the Human Resources Committee 20 and the full Board of Trustees. Her request 21 was refused." 22 And you stated, correct, 23 "Admitted. It is admitted that Plaintiff 24 begged for her job and asked to be heard by the</p>	<p style="text-align: right;">Page 219</p> <p>1 proved to be at complete variance with what 2 Defendant Garvin came to tell others about 3 Plaintiff." 4 And then in 25 you say, "Denied. 5 Mr. Garvin never made such a statement. By way 6 of further answer, it is denied that Mr. Garvin 7 made such a statement to any others as which 8 Plaintiff without justification continues to 9 insist upon." 10 Is that your answer? 11 A. That is my answer. 12 Q. Is it your testimony that you've 13 never said to anybody, I don't want you to 14 think I'm a racist? 15 A. I never said to anybody that, 16 no, I didn't think -- I never used the term 17 "racist" in anything. 18 I was asked by your client in 19 the termination meeting with Mr. Bauer, so you 20 think I'm a racist? And the answer is, 21 absolutely not. And I never once said to a 22 single person that I felt that Kathy was a 23 racist. 24 Q. Okay. That's not my question.</p>

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THOMAS P. GARVIN

<p style="text-align: right;">Page 220</p> <p>1 A. Actually, that was your 2 question. 3 Q. All right. Well, then let me 4 phrase it a different way. 5 Did you ever say to anyone other 6 than Kathy, I don't want you to think that 7 you're a racist? 8 A. No. 9 Q. Did you ever use the term 10 "racist"? Have you ever used that term? 11 A. Not that I'm aware of. 12 MS. DEON: Any time in your 13 life, is what he's asking. 14 MR. SCHWARTZ: At any time. 15 THE WITNESS: Oh. 16 A. (Continuing) Not that I recall. 17 BY MR. SCHWARTZ: 18 Q. Did you ever make a statement to 19 anyone, I don't want people to think that I'm 20 getting rid of old-timers? Did you ever say 21 that? 22 A. No. That's not the kind of 23 language that I use. 24 Q. Anything similar?</p>	<p style="text-align: right;">Page 222</p> <p>1 supply any specifics to anybody else who worked 2 at Waverly or was affiliated with Waverly? 3 A. I didn't get into the specifics 4 of any -- of anything. 5 Q. Okay. 6 A. I certainly can't control what 7 rumors -- 8 Q. No, I didn't say that. 9 A. -- were passed around. But I 10 did not get into the specifics. 11 Q. So that all you did was put out 12 the official statement, correct? 13 A. That is correct. And as I 14 mentioned earlier, I think the folks who had 15 seen her tweet from Waverly Care Associates, 16 you know, where it went from there had nothing 17 to do with me. It had everything to do with 18 the way that they read the tweet, how they 19 interpreted the tweet. And, you know, I can't 20 control what 300 employees talk about. But it 21 didn't come from me. 22 Q. Why would the tweet have had the 23 attention of Waverly Care Associates? 24 MS. DEON: Objection.</p>
<p style="text-align: right;">Page 221</p> <p>1 A. No. 2 Q. Paragraph 28, the second 3 sentence in 28. If I'm going too quickly, let 4 me know. "As an example, on the very next day 5 after her departure, Plaintiff learned from an 6 outside consultant that Defendant Garvin had 7 told him that she was fired and that it was 8 because of an inappropriate post on Facebook." 9 Did you ever say that? 10 A. No. And I think your Question 11 Number 28 would show that, because why would I 12 say to anybody that it was an inappropriate 13 post on Facebook, when, actually, it was a 14 Twitter issue? So no. 15 Q. Did you say to anyone that it 16 was an inappropriate post on Twitter? 17 A. No. 18 Q. And the last sentence of 28 is, 19 "This same misinformation was passed on to 20 others, including Waverly residents in what was 21 clearly a malicious fashion." 22 Other than the statement that 23 you put out that she was no longer at Waverly, 24 other than the official statement, did you</p>	<p style="text-align: right;">Page 223</p> <p>1 You can answer the question. 2 BY MR. SCHWARTZ: 3 Q. If you know. Why, I mean? 4 A. The answer is, because one of 5 them somehow saw it. 6 Q. And you don't think that the 7 lady who headed it, who didn't get along with 8 my client, distributed that information? 9 A. I don't believe that's her 10 style. 11 Q. Do you know for a fact whether 12 she did, whether she tried to fan the flames of 13 the tweet? 14 MS. DEON: Objection. 15 You can answer. 16 BY MR. SCHWARTZ: 17 Q. If you know. 18 A. No, I don't, because she didn't 19 even bring it to my attention, when she very 20 well could have if she wanted to see something 21 happen to your client, so. 22 Q. Who brought it to your 23 attention? 24 A. It was brought to my attention</p>

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THOMAS P. GARVIN

<p style="text-align: right;">Page 224</p> <p>1 through the anonymous letter.</p> <p>2 Q. You sat through Ms. Summers'</p> <p>3 deposition when she said, you know, how</p> <p>4 articulate the person was and that she wasn't</p> <p>5 as articulate as the writer, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Does that level of</p> <p>8 articulateness resemble anybody that you know</p> <p>9 at Waverly or connected with Waverly?</p> <p>10 A. I have no idea who can write</p> <p>11 that well. But I would certainly like to meet</p> <p>12 the person.</p> <p>13 Q. Twenty-nine. "Sometime on or</p> <p>14 about October 7, 8 or 9, Plaintiff received a</p> <p>15 telephone call from a previous coworker, Meg</p> <p>16 Guenveur who said that she learned that</p> <p>17 Plaintiff was fired for violating Waverly's</p> <p>18 Social Media Policy."</p> <p>19 Is that what it says?</p> <p>20 A. Yes.</p> <p>21 Q. And then you deny that at any</p> <p>22 time you advised her about the circumstances,</p> <p>23 correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 226</p> <p>1 content of the discussion. But I certainly</p> <p>2 didn't get into she sent a tweet that</p> <p>3 segregated a class of employees and apparently</p> <p>4 polled employees and tweeted about it. No, I</p> <p>5 didn't get into that level of detail.</p> <p>6 Q. When is progressive discipline</p> <p>7 used?</p> <p>8 A. Progressive discipline is used</p> <p>9 depending on the level of the infraction. So</p> <p>10 if somebody is late to work, they may start</p> <p>11 with an oral counseling as step number one.</p> <p>12 And then if they're late to work in a pattern,</p> <p>13 meaning they call out every Friday or every</p> <p>14 Monday and you start to notice it over a period</p> <p>15 of time, maybe that progresses to a written</p> <p>16 warning.</p> <p>17 Q. Okay.</p> <p>18 A. And then say they, whatever,</p> <p>19 call out multiple times and it's a significant</p> <p>20 pattern, then it progresses to a final written</p> <p>21 warning.</p> <p>22 Q. Right.</p> <p>23 A. And then you have the different</p> <p>24 options of dismissal or what have you.</p>
<p style="text-align: right;">Page 225</p> <p>1 Q. So how did Ms. Guenveur -- who</p> <p>2 is Ms. Guenveur?</p> <p>3 A. So that's pronounced Genveer</p> <p>4 (ph).</p> <p>5 Q. Oh, okay.</p> <p>6 A. G-u-e-n-v-e-u-r.</p> <p>7 Q. Yes. How did she learn about</p> <p>8 it?</p> <p>9 A. I have no idea. I would assume</p> <p>10 it was the rumor mill. Meg is not someone that</p> <p>11 I have stayed in touch with since she left. I</p> <p>12 ran into her one time at a restaurant, but</p> <p>13 certainly had no conversation with her about</p> <p>14 the dismissal of Kathy.</p> <p>15 Q. Did you meet with the senior</p> <p>16 leadership team and tell them that my client</p> <p>17 was fired for violating the social media</p> <p>18 policy?</p> <p>19 A. I met with the senior leadership</p> <p>20 team to let them know that she was no longer</p> <p>21 employed.</p> <p>22 Q. And that was it? You didn't say</p> <p>23 anything more?</p> <p>24 A. You know, I don't recall the</p>	<p style="text-align: right;">Page 227</p> <p>1 Within progressive discipline,</p> <p>2 there are levels of seriousness of the offense.</p> <p>3 So in your client's case, her offense was what</p> <p>4 would be considered to be a critical offense.</p> <p>5 And so, therefore, progressive discipline</p> <p>6 wouldn't apply.</p> <p>7 Q. Do you remember the specific</p> <p>8 instance that Ms. Summers testified to with</p> <p>9 respect to the, you know, worker who was</p> <p>10 assigned to her in the matter of laundry theft</p> <p>11 or whatever? Do you remember that?</p> <p>12 A. Yes, I remember.</p> <p>13 Q. Did Ms. Summers come to you and</p> <p>14 try to have something less than a firing occur?</p> <p>15 A. You know, I don't recall</p> <p>16 specifically. But it seems like if she</p> <p>17 communicated with your client, she probably</p> <p>18 said to me that she, you know, was upset about</p> <p>19 it, because it was her housekeeper, as she</p> <p>20 articulated, someone she was very fond of and,</p> <p>21 you know, didn't -- didn't necessarily feel</p> <p>22 that she should have been fired for stealing.</p> <p>23 Q. You didn't feel that?</p> <p>24 A. No, no. She didn't --</p>

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THOMAS P. GARVIN

<p style="text-align: right;">Page 228</p> <p>1 Q. She didn't, okay.</p> <p>2 A. -- feel that.</p> <p>3 Stealing is a great example of a</p> <p>4 critical offense, so something that doesn't</p> <p>5 require progressive discipline.</p> <p>6 There are other examples at</p> <p>7 Waverly Heights where if we catch someone</p> <p>8 stealing from us, we consider that to be a</p> <p>9 critical offense, and so they're terminated.</p> <p>10 And there are multiple examples of that.</p> <p>11 So as I said earlier, a critical</p> <p>12 offense can take on many -- you know, many</p> <p>13 faces. One is stealing. One is tweeting about</p> <p>14 a protected class, representing them on behalf</p> <p>15 of the company. So, yeah, those -- those are</p> <p>16 things that are critical offenses.</p> <p>17 Q. So did you look into whether</p> <p>18 this health care worker committed a critical</p> <p>19 offense yourself?</p> <p>20 A. The health -- that we didn't say</p> <p>21 anything about a health care worker.</p> <p>22 Q. The home care worker, whoever</p> <p>23 was assigned to Ms. Summers.</p> <p>24 A. You're talking about the</p>	<p style="text-align: right;">Page 230</p> <p>1 'personal blogging' on the other, stating that</p> <p>2 'Waverly Heights respects the rights of</p> <p>3 employees to write blogs and use social</p> <p>4 networking sites and does not want to</p> <p>5 discourage employees from self-publishing and</p> <p>6 self-expression."</p> <p>7 Is that the social media policy,</p> <p>8 as you understand it?</p> <p>9 A. Like I said, it's -- it's in</p> <p>10 writing in the answer and it speaks for itself,</p> <p>11 if that's what it says. It's a pretty</p> <p>12 lengthy -- lengthy policy.</p> <p>13 Q. Did my client use company-owned</p> <p>14 assets to do her tweet?</p> <p>15 A. Well, all I can say is that when</p> <p>16 I brought it to her attention, she was</p> <p>17 immediately up to her work-owned computer on</p> <p>18 her Twitter deleting it within a matter of</p> <p>19 minutes. So I would have to say, yes, that she</p> <p>20 did use company-owned property.</p> <p>21 Q. She used company-owned property</p> <p>22 to take it off, correct?</p> <p>23 A. Yeah. But your question was,</p> <p>24 did she use company-owned --</p>
<p style="text-align: right;">Page 229</p> <p>1 housekeeper?</p> <p>2 Q. The housekeeper?</p> <p>3 A. Okay. There's a big difference</p> <p>4 between home care worker and housekeeper, so.</p> <p>5 Q. The housekeeper, did you look</p> <p>6 into whether that was really a critical</p> <p>7 offense?</p> <p>8 A. Yes, we did a full investigation</p> <p>9 on it, determined that it was a critical</p> <p>10 offense. We had videotape of her stealing the</p> <p>11 sheets. And -- and so we let her go.</p> <p>12 Q. Were they new sheets as opposed</p> <p>13 to old sheets?</p> <p>14 A. They were new sheets.</p> <p>15 Q. They were new sheets, okay.</p> <p>16 A. High-count sheets, if I recall</p> <p>17 correctly.</p> <p>18 Q. High-count sheets?</p> <p>19 A. Yes.</p> <p>20 Q. Paragraph 40 in the Complaint.</p> <p>21 "Set forth in the Waverly Heights Employee</p> <p>22 Handbook, the Social Media Policy makes a clear</p> <p>23 distinction between 'company-owned assets' and</p> <p>24 'work-related blogging' on the one hand, and</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. Did she use it to put it on?</p> <p>2 A. Can I answer?</p> <p>3 She asked -- your question was,</p> <p>4 did she use company-owned property --</p> <p>5 Q. Okay.</p> <p>6 A. -- to do blogging.</p> <p>7 Q. Right.</p> <p>8 A. So I said, my answer is that I</p> <p>9 can only assume yes, since when I brought it to</p> <p>10 her attention, that within minutes of it being</p> <p>11 brought to her attention, she was up on</p> <p>12 whatever Twitter account she has deleting it.</p> <p>13 Q. Did you see her do that --</p> <p>14 A. No.</p> <p>15 Q. -- delete it?</p> <p>16 A. But I certainly saw the result</p> <p>17 that it wasn't there any longer.</p> <p>18 Q. Well, how else, if she's at</p> <p>19 work, is she going to take it off her Twitter</p> <p>20 account than to use a computer that the company</p> <p>21 has? How else is she going to do that?</p> <p>22 A. You asked me a question and I --</p> <p>23 Q. That's my new question.</p> <p>24 A. -- my answer speaks for itself.</p>

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<p style="text-align: right;">Page 232</p> <p>1 Q. No. But that's my question. 2 How else is she going to take it 3 off? If you instructed her to take it off, how 4 else is she going to quickly take it off? Is 5 she going to wait until she gets home? 6 A. That's up to her on how to take 7 off what she put on. I'm just answering your 8 question that did she -- 9 Q. I understand. 10 A. -- use a company computer to 11 access her Twitter or her social media or 12 blogging, and the answer is yes. 13 Q. And you have personal knowledge 14 of that? 15 A. Yes, because it went away within 16 minutes of my bringing it to her attention. 17 Q. Could she have done it on her 18 cell phone? 19 A. I don't know. Perhaps. 20 Q. Could she have put it on using 21 non-company assets, you know, published the 22 tweet? 23 A. I assume that she probably could 24 have.</p>	<p style="text-align: right;">Page 234</p> <p>1 company outside of Philadelphia, having polled 2 the -- 100 percent of the African-American 3 staff, AA, and then saying that they were all 4 voting for Trump. So -- 5 Q. And you're saying that -- 6 A. -- you can tie her name with a 7 simple Google search against Waverly Heights 8 human resource -- I'm sorry, human resources, 9 Kathy Jungclaus, and you're going to come up 10 with Waverly Heights, a direct correlation. 11 Q. I think we've done that. We've 12 been through this before. 13 Did you ever sign a conflict of 14 interest statement? 15 A. Yeah, I think I did. 16 Q. You sat here through Mr. Bauer's 17 deposition with respect to the Facebook page of 18 Janet Thompson, right? You sat through 19 Mr. Bauer's deposition testimony when we talked 20 about Janet Thompson? 21 A. Yes, I did. 22 Q. Have you ever had cause to look 23 at her Facebook page? 24 A. No, I have not.</p>
<p style="text-align: right;">Page 233</p> <p>1 Q. Work-related blogging. Was that 2 work-related blogging on the one hand? Did you 3 consider that tweet work-related? 4 A. I certainly don't consider it 5 work-related. 6 Q. Okay. 7 A. And I'm not necessarily in tune 8 to what blogging is as opposed to tweeting. 9 Q. I don't make a distinction. Do 10 you? 11 A. I think there is a distinction, 12 but ... 13 Q. Well, I'm using the words 14 interchangeably, so. 15 A. I don't know that you should do 16 that. 17 Q. All right. Then was it a 18 work-related tweet? 19 A. It was tied directly to Waverly 20 Heights. 21 Q. How was it tied directly to 22 Waverly Heights? 23 A. Because she represented herself 24 under her own name as the vice president of a</p>	<p style="text-align: right;">Page 235</p> <p>1 Q. Have you ever had cause to look 2 at anybody else's Facebook page or tweets other 3 than my client -- 4 A. No. 5 Q. -- who worked for Waverly? 6 None? 7 A. No. I don't do that. 8 Q. On 49 -- 9 A. Page 49 or paragraph? 10 Q. Paragraph 49 of the Complaint 11 and the Answer. Forty-nine reads, "Since 12 Defendant Garvin started his employment at 13 Waverly in 2010, he has systematically removed 14 senior level management and replaced them with 15 his own male-dominated, hand-picked team. 16 Notwithstanding, each time someone was 17 terminated, Garvin made it a point to tell 18 Plaintiff and others, 'You don't have to worry 19 about your job, I am really not out to get the 20 old-timers.'" 21 Did you ever make a statement 22 like that to my client? 23 MS. DEON: Objection. Asked and 24 answered.</p>

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<p style="text-align: right;">Page 236</p> <p>1 MR. SCHWARTZ: This time it's to 2 my client. 3 BY MR. SCHWARTZ: 4 Q. Did you ever say that, you don't 5 have to worry about your job. I'm really not 6 out to get the old-timers? 7 A. No, that's not language that I 8 use. 9 Q. Anything similar to that? 10 A. No. I expressed appreciation 11 for the team that's there and the hard work 12 they do regardless of how long they worked for 13 us. 14 Q. Why would Marc Hiel tell my 15 client that you said that? 16 MS. DEON: Objection. 17 You can answer. 18 BY MR. SCHWARTZ: 19 Q. Why would he say that? 20 MS. DEON: Objection. 21 A. Well, I have every reason to 22 believe -- 23 THE WITNESS: Can I answer it? 24 MS. DEON: Yes.</p>	<p style="text-align: right;">Page 238</p> <p>1 the hallway, what was wrong. And she said she 2 didn't want to talk about it. 3 And when I pressed her on it, I 4 said, is it -- because I was worried for her, 5 because clearly her whole personality, which 6 is, you know, generally friendly and outgoing, 7 went into this just sagging, mopey state. 8 And so when I pressed her on it, 9 I said, look, is it something personal or 10 something professional? Because she wouldn't 11 tell me. 12 Q. Okay. 13 A. And she said it was -- you know, 14 it was professional. So I said okay. So then 15 this went on for the better part of another -- 16 whatever it was, a day or two days, when 17 finally, you know, I asked her, I said, are you 18 ready to tell me, you know, what's wrong? 19 And the gist of what she 20 complained about is because her job as vice 21 president of human resources was to process 22 bonuses for senior level staff. And she was 23 getting a bonus, but she didn't feel it was 24 enough compared to some of her -- her</p>
<p style="text-align: right;">Page 237</p> <p>1 MR. SCHWARTZ: Yes. 2 A. (Continuing) -- that your client 3 is exaggerating whatever conversation she 4 claims to have had with Marc Hiel. 5 BY MR. SCHWARTZ: 6 Q. If he said that he had heard you 7 make that comment, would he be lying? 8 A. Yes. 9 Q. Maybe we've touched on this. 10 Paragraph 50. Do you recall the meeting in 11 December of 2015 when my client met with you 12 and asked why she hadn't received pay raises? 13 A. That was not the content of that 14 meeting, nor how it -- 15 Q. What happened in that meeting? 16 A. -- nor how it went down. 17 Q. What happened in that meeting? 18 A. Your client spent the better 19 part of two-and-a-half days in what I can only 20 describe as a state of, you know, mopiness 21 (sic). I don't know how to spell that. But 22 made it very clear to everybody that she was 23 moping for days. 24 And I asked her, specifically in</p>	<p style="text-align: right;">Page 239</p> <p>1 co-workers. 2 So that was -- you know, and 3 then my notes all speak for themselves, which 4 you have and I think are a matter of record on 5 the detail. I'm just giving you what I recall 6 in summary. 7 Q. That's fine. How would you 8 differentiate the bonuses and compensation 9 ratio that Mr. Supper received, as well as his 10 performance over the years, and that of my 11 client? How would you contrast them? 12 MS. DEON: Which time frame are 13 you speaking about, Mr. Schwartz? Do you 14 mean in December 2015? 15 MR. SCHWARTZ: Yes, about that 16 time and forward. 17 BY MR. SCHWARTZ: 18 Q. How would you compare, contrast 19 them, when it came to justifying his pay? 20 A. So speaking specifically of 21 Mr. Supper, I would -- I would tell you that 22 your client, in my time at Waverly, advanced 23 quicker on her compensation ratio than 24 Mr. Supper.</p>

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<p style="text-align: right;">Page 240</p> <p>1 I would spend a lot of time 2 talking with your client about comp ratios when 3 I arrived. And she knows darn well that many 4 of them, many of her peers, were below a comp 5 ratio of 1.0. 6 And we use a compensation 7 consultant. And Kathy and I would talk about 8 this a lot. And I did not disagree that we 9 needed to advance the senior level managers to 10 a reasonable comp ratio, which I would tell you 11 would be, you know, between a 1.02 and 12 whatever, 1.06. 13 And so we made it a mission, 14 over the course of a couple of years, to get 15 everybody to that point, including your client, 16 who advanced from -- I think she was below a 17 1.0, to whatever it ended up being. We can 18 pull the numbers. But it was clearly like a 19 1.04, 1.03, 1.05, which meant significant 20 raises to get her there, along with her peers. 21 It was not just her, it was her peers. Because 22 I completely agreed that that was the right 23 approach to take. 24 Q. Can I -- go ahead. Keep going.</p>	<p style="text-align: right;">Page 242</p> <p>1 Q. Well, then, why don't you 2 produce those records, okay, as far as his 3 compensation levels and hers throughout their 4 respective -- 5 A. If it will enlighten you -- 6 Q. Yes, it will enlighten me. 7 A. -- it will enlighten you to the 8 truth. 9 MR. SCHWARTZ: Do you want to 10 strike that question? I have never been 11 deposed. I'm waiting for the first time, 12 and this ain't it. 13 BY MR. SCHWARTZ: 14 Q. Did we already talk about the 15 workers' comp claim and you denied that you 16 told her not to file one? Do you have a 17 recollection? 18 A. I don't recall if we talked 19 about that or -- 20 THE WITNESS: Did we talk about 21 that the last time (addressing Ms. Deon)? 22 BY MR. SCHWARTZ: 23 Q. Well, let's go to 60 then. 24 MS. DEON: I don't recall that.</p>
<p style="text-align: right;">Page 241</p> <p>1 A. Well, that's -- you know, that's 2 the answer. So as it compares to Bob Supper, 3 he came in at a comp ratio. I know you have 4 some fabrication in here that he was at a 1.20. 5 Well, that couldn't be farther from the truth. 6 He came in, you know, right around where 7 everybody else was, you know, at a comp ratio 8 that was in that range that I had mentioned, 9 around a 1.05, 1.06. 10 Q. Well, let's look at 11 Paragraph 51. "In contrast to Plaintiff's 12 situation, when performance reviews were 13 completed for 2015, the male Senior VP of 14 Finance, Robert Supper (employed for only three 15 years), was assigned a compensation ratio of 16 approximately 125 percent of market value, in 17 contrast to Plaintiff's ratio of 102 percent of 18 market value, despite her many years of 19 service." 20 Do you agree that that's what 21 his assignment was? 22 A. No. That's a complete lie on 23 your part and on your client's part, and 24 easily -- easily proven. And she knows that.</p>	<p style="text-align: right;">Page 243</p> <p>1 BY MR. SCHWARTZ: 2 Q. It may be quicker to just 3 address it than to remember what we did. 4 Take a look at Paragraph 60. 5 Just read it to yourself. I'm not going to 6 read it. 7 A. I'm familiar with this. 8 Q. So in your response, in the 9 Answer, it says, "It is denied that Mr. Garvin 10 told Plaintiff not to file a workers' 11 compensation claim," correct? 12 A. That's correct. 13 Q. In fact, you were not even 14 present on the day when she suffered an 15 asthmatic attack after being in the attic of a 16 building, correct? 17 A. That's correct. 18 Q. How did you learn about it then? 19 A. I'm trying to recall. It would 20 have been early in the following week when I 21 came back. And I think I was actually having a 22 conversation with your client in front of my 23 assistant, where in sort of a joking fashion, 24 they were all talking about how it would look</p>

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<p style="text-align: right;">Page 244</p> <p>1 for the, you know, vice president to have this 2 workers' comp report. It never was something 3 that I told her not to report. In fact, it 4 was -- I'd have no reason to not report any 5 work-related injury. There's no -- 6 Q. I mean, no matter who you are, 7 if you've got a bona fide workers' compensation 8 claim, you can file it, right? 9 A. If you have a cut on a finger at 10 work, you can -- you should file a report with 11 the workers' compensation company. 12 Q. And she did, didn't she? 13 A. Yes. 14 Q. "Plaintiff was assessed by a 15 nurse on premises but refused to go to the 16 hospital." 17 How did you know that? 18 A. There's an incident report and, 19 you know -- 20 Q. So you looked at that 21 afterwards, right? 22 A. Yes. I was not there the day 23 that it went down when they tried to help her. 24 Q. When did you see the incident</p>	<p style="text-align: right;">Page 246</p> <p>1 would be good practice to each document our 2 take on how the meeting went. 3 Q. Did you ever do anything like 4 that with respect to another firing? 5 A. I probably have. I would tend 6 to do that on -- on more serious issues. 7 Q. And you'd have Mr. Bauer or 8 someone else from the board as a witness? 9 A. It would depend on the -- the 10 person, really. In this case -- in, you know, 11 a case before, I would have the vice president 12 of human resources with me. 13 Q. Sure. 14 A. But in this case in particular, 15 I think it would be inappropriate to have 16 another one of her peers there. And so, yeah, 17 the chairman of the human resources committee 18 made -- made common sense to -- you know, to 19 all of us. 20 Q. So it was your idea that you 21 each take notes? 22 A. You know, like I said, I think 23 Dick and I both said, we need to document this 24 conversation.</p>
<p style="text-align: right;">Page 245</p> <p>1 report, if you can remember? After the lawsuit 2 started? 3 A. Yeah, maybe. I honestly don't 4 recall when -- when I saw it for the first 5 time. 6 MR. SCHWARTZ: Can you pull out 7 all of the Soltis e-mails. 8 Off the record. 9 --- 10 (Whereupon, a recess was taken 11 from 2:41 p.m. to 2:45 p.m.) 12 --- 13 BY MR. SCHWARTZ: 14 Q. Before we get to the e-mails of 15 Mr. Soltis. 16 Mr. Bauer testified that he took 17 notes with respect to the meeting with you and 18 my client, correct? 19 A. Yes. 20 Q. And you also took notes which 21 you supplied me with, correct? 22 A. That's correct. 23 Q. Whose idea was it to take notes? 24 A. I think we thought together it</p>	<p style="text-align: right;">Page 247</p> <p>1 Q. Okay. That's fine. 2 To your knowledge, were minutes 3 kept of the HR meeting that dealt with my 4 client? 5 A. No. 6 Q. No. So are you sure that there 7 weren't any minutes taken? 8 A. Yeah. That would be considered 9 an executive session, so. 10 Q. So if Mr. Bauer had testified -- 11 and, again, I don't remember exactly what he 12 said -- but if he had testified that there were 13 minutes, he would be wrong? 14 A. Yes, because they're in 15 executive session. We have human resources 16 committee minutes, but we don't discuss 17 personnel matters, you know, in -- 18 Q. In that context, okay. 19 A. -- in that context. 20 Q. You've testified -- and I'm not 21 going to ask you again, to go over it again -- 22 but you testified that virtually all of the 23 meetings that you had included counsel, when it 24 came to the decision to fire my client,</p>

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<p style="text-align: right;">Page 248</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Aside from the meeting that you</p> <p>4 had with Mr. Bauer and my client, did you talk</p> <p>5 to anyone else about the firing of my client</p> <p>6 without counsel?</p> <p>7 A. No. We -- we kept it, you know,</p> <p>8 very much within the small group of the human</p> <p>9 resources committee, of which Mr. Bauer is a</p> <p>10 member, and then, of course, you know, with</p> <p>11 outside counsel.</p> <p>12 Q. All right. Let's do these</p> <p>13 e-mails. Let me give you the whole pile.</p> <p>14 And correct me if I am wrong,</p> <p>15 Mr. Garvin or Grace. We only talked about</p> <p>16 these e-mails in the abstract, correct?</p> <p>17 I remember your testimony was</p> <p>18 that you didn't pay attention to these things,</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. But we didn't talk about any of</p> <p>22 the specifics of them, did we?</p> <p>23 MS. DEON: Correct. That's my</p> <p>24 understanding.</p>	<p style="text-align: right;">Page 250</p> <p>1 MR. SCHWARTZ: So that's that.</p> <p>2 What's the next one, Grace?</p> <p>3 MS. DEON: It's Bauer 4.</p> <p>4 MR. SCHWARTZ: Off the record.</p> <p>5 ---</p> <p>6 (Whereupon, a discussion was</p> <p>7 held off the record.)</p> <p>8 ---</p> <p>9 MR. SCHWARTZ: Back on.</p> <p>10 BY MR. SCHWARTZ:</p> <p>11 Q. Bauer 4 is from Chuck Soltis</p> <p>12 dated Friday, December 6, 2013, to Dick Bauer,</p> <p>13 et al.</p> <p>14 Are you there?</p> <p>15 A. I do not see my name.</p> <p>16 Q. I don't see your name there. I</p> <p>17 see your mother's name there, right?</p> <p>18 A. Yes.</p> <p>19 Q. And Ms. Jungclaus's name is</p> <p>20 there, correct?</p> <p>21 A. Yes, I see her name there.</p> <p>22 Q. If you go down further, it says,</p> <p>23 "This is worth reading. Canada Free Press.</p> <p>24 The unspoken success of ObamaCare."</p>
<p style="text-align: right;">Page 249</p> <p>1 MR. SCHWARTZ: Okay. Thanks.</p> <p>2 BY MR. SCHWARTZ:</p> <p>3 Q. Let's go to Exhibit -- what do</p> <p>4 you have in front of you?</p> <p>5 A. Summers 1.</p> <p>6 Q. What's the Bates number on the</p> <p>7 bottom? Five --</p> <p>8 A. The Bates number, Waverly 537.</p> <p>9 Q. This document is named</p> <p>10 Summers 1. And it comes from, does it not.</p> <p>11 Chuck Soltis, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And it was sent February 29,</p> <p>14 2016.</p> <p>15 You are not a recipient,</p> <p>16 correct?</p> <p>17 A. I do not see my name on the</p> <p>18 recipient list.</p> <p>19 Q. Other than these proceedings and</p> <p>20 the last time we were together, do you remember</p> <p>21 any e-mails circulating around about Mr. Soros</p> <p>22 and Hitler's henchman, Adolf Eichmann? Do you</p> <p>23 remember anything like that?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 251</p> <p>1 Did you ever see this before</p> <p>2 your depositions?</p> <p>3 A. No.</p> <p>4 Q. Did Ms. Jungclaus ever complain</p> <p>5 to you about receiving e-mail from Mr. Soltis</p> <p>6 of a political nature?</p> <p>7 A. She never complained about it.</p> <p>8 Q. Did anyone ever complain about</p> <p>9 it to you?</p> <p>10 A. No, nobody complained. Some</p> <p>11 people would say they got them. And the</p> <p>12 general consensus was, everybody just deleted</p> <p>13 them because they tend to be lengthy and nobody</p> <p>14 at Waverly has the time to get in to be reading</p> <p>15 all this.</p> <p>16 Q. So you're talking about Waverly</p> <p>17 employees just not having the time to read this</p> <p>18 stuff. You said nobody at Waverly.</p> <p>19 A. Yeah. Well, the people that</p> <p>20 they -- nobody ever complained.</p> <p>21 Q. Right.</p> <p>22 A. And so anybody that was a</p> <p>23 recipient, no, nobody ever complained about it.</p> <p>24 Q. Do you know if any of the</p>

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<p style="text-align: right;">Page 252</p> <p>1 recipients passed them around to other 2 employees at Waverly? 3 A. I don't think so, because we did 4 a search to see if anybody forwarded them, and 5 didn't turn that up. 6 Q. Is it that it didn't turn up or 7 maybe you weren't able to search in that level 8 of detail? 9 A. I think it's that it didn't turn 10 up. 11 Q. It didn't turn up, okay. 12 The next one is Bauer 5 -- 13 A. Okay. 14 Q. -- from Chuck Soltis to -- are 15 you on this? Yes. 16 A. Yes. 17 Q. Robert Supper, Thomas Garvin, 18 Dick Bauer and so forth. "Famous Presidential 19 Lies Contest." 20 Do you remember this? 21 A. No, I do not. 22 Q. Did you ever say to 23 Mr. Soltis -- and forgive me if I asked this 24 before -- did you ever say to Mr. Soltis, you</p>	<p style="text-align: right;">Page 254</p> <p>1 Soltis, February 24th. I don't believe you're 2 on it, although Mr. Supper is, correct? 3 A. Yes, I see his name there. 4 Q. Just page through it. This is 5 the one about the first Muslim woman on the 6 municipal court in Brooklyn holding the Koran. 7 Do you have any recollection of 8 seeing this? 9 A. No, and I'm not copied on it. 10 Q. Right. Let's go to Bauer 7 from 11 Chuck Soltis, June 14, 2016, right? 12 A. Yes. 13 Q. And it's to Dick Bauer and a 14 bunch of other people, right? 15 A. Yes. 16 Q. You are on the second line from 17 the bottom, on the far right, correct? 18 A. It looks like he copied me on 19 this. 20 Q. The subject is, "Unfortunately, 21 based on all, she has said, Clinton appears to 22 be cut from the same cloth," correct? 23 A. That's what it says. 24 Q. And then when you go back into</p>
<p style="text-align: right;">Page 253</p> <p>1 know, nobody has time for this. Don't do it. 2 We don't want political stuff? 3 Did you ever say anything to him 4 about knock it off? 5 A. No, I did not. 6 Q. Mr. Bauer testified earlier 7 today that it was sometimes as much as once a 8 week. 9 Do you remember that testimony? 10 A. I remember it, yes. 11 Q. Do you remember the frequency at 12 which you got these things? 13 A. It was -- you know, it was 14 somewhat frequent. But to put a time frame on 15 it, I would be completely guessing. It was 16 frequent enough that literally when they came, 17 you just hit delete and you don't -- you didn't 18 even give it a second thought. 19 Q. So he might not be off if he's 20 talking about once a week, Mr. Bauer? 21 A. I mean, he's definitely not off. 22 Q. By much? 23 A. Yeah. 24 Q. All right. Bauer 6, from Chuck</p>	<p style="text-align: right;">Page 255</p> <p>1 it, there are all of these Obama cartoons, 2 correct? 3 A. Let's see. Overseas cartoons. 4 Are these from newspapers from overseas? 5 Q. I guess -- 6 A. It looks like they're about -- I 7 have not seen them. But it looks like it's 8 about the United States. And it looks like it 9 was cartoons that were in newspapers, I guess, 10 across the world. 11 Q. Okay. And then on 5/29, there's 12 a cartoon that has a caricature of Obama that 13 says, "My policies have created jobs," and then 14 it says, "ISIS Beheaders Wanted. Now hiring 15 bomb makers." 16 Is that what it says? Is that 17 what the cartoon says? 18 A. It says, "My policies have 19 created jobs." 20 Q. Right. 21 A. And then there's the next 22 caption that says, "ISIS Beheaders Wanted." 23 Q. Right. 24 A. The next says, "Now hiring bomb</p>

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<p style="text-align: right;">Page 256</p> <p>1 makers." And it says, "None of these are from 2 USA papers." So I would have to assume that 3 it's from newspapers somewhere overseas. 4 Q. Then it concludes by saying, 5 does it not, "How is it that much of the world 6 sees Obama for what he really is and yet many 7 in the U.S. think he's doing just fine and 8 admire him"? 9 Is that what it says? 10 A. That's what it says at the 11 bottom. 12 Q. Do you have any recollection of 13 getting this? 14 A. No. 15 Q. All right. How about Bauer 8? 16 Let's see if you're on this. 17 I'll say that when it comes to 18 Bauer 8, it's called "Trust is Gone by Dennis 19 Prager." 20 Do you have any recollection of 21 seeing this? 22 MS. DEON: And he's not on it. 23 BY MR. SCHWARTZ: 24 Q. And you're not on it.</p>	<p style="text-align: right;">Page 258</p> <p>1 believe you're on it. 2 On Page 601, do you know 3 Dhimmitude is? 4 A. I do not. 5 Q. All right. Bauer 10, from Chuck 6 Soltis to Mr. Bauer. You're not on this one? 7 A. Correct. 8 Q. The second page is Hillary 9 Clinton in a tiara, correct? 10 A. It would appear as such. 11 Q. Do you have any recollection of 12 seeing this? 13 A. No. And it doesn't look like 14 I'm copied on this one anyway. 15 Q. No, you're not. 16 The next one is 534 on this 17 group. I don't believe you're on this one 18 either. 19 Who is Peggy Faha? 20 A. She's our sales consultant at 21 Waverly Heights. She's an employee. 22 Q. So does she have a Waverly 23 Heights e-mail? 24 A. She does.</p>
<p style="text-align: right;">Page 257</p> <p>1 A. No, I don't. 2 Q. Did your mother ever discuss 3 these with you? She's on this one. 4 A. No. 5 Q. She never discussed or mentioned 6 the fact that she got them? 7 A. No. 8 Q. She was what, a friend of his or 9 a social friend? 10 A. They attended an event where 11 they met each other. And then, you know, 12 somehow she ended up on a few of his e-mails 13 here. 14 Q. Okay. Bauer 9 from Soltis, 15 Sunday, February 1st, 2015, to Dick Bauer, 16 et al., and then you're on the second line from 17 the bottom, correct? 18 A. Yes. 19 Q. Any recollection of this? It 20 says, "Amazing how deaf, dumb, and blind 21 America has apparently become." 22 A. No, no recollection. Like I 23 said, I would just delete this kind of stuff. 24 Q. And then the next page, I don't</p>	<p style="text-align: right;">Page 259</p> <p>1 Q. And the way that these show up, 2 when we're talking about employees, if it just 3 says "Peggy Faha," that means she's at the 4 Waverly e-mail, correct? 5 A. You know, I'm not sure about 6 that. It's Peggy Fay (ph), is how you say it. 7 Q. Sorry. 8 A. But, you know, I don't think 9 that's the sole reason. Because if you look at 10 some of the other names on there that are just 11 the names, they're not all Waverly employees. 12 Q. Right. Did board members have 13 Waverly e-mail addresses, too? 14 A. You know, they did for a short 15 period of time, but nobody used them. So they 16 don't anymore. 17 Q. Do you know when that changeover 18 happened? 19 A. It never really started. We 20 wanted them to use them and they just didn't. 21 It was just another e-mail. So we, you know, 22 continued to use their -- you know, their 23 personal contact e-mail. 24 Q. So your testimony is that when</p>

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1 you'd see e-mails from Mr. Soltis, you would
 2 just hit the delete button?
 3 A. If they were not work-related,
 4 yes, I would absolutely hit the delete button.
 5 Q. Did you ever hit the delete
 6 button by mistake and then find out, oh, they
 7 were work-related?
 8 A. Not that I recall.
 9 MR. SCHWARTZ: Let's take a
 10 break and maybe we're done.
 11 ---
 12 (Whereupon, a recess was taken
 13 from 3:02 p.m. to 3:06 p.m.)
 14 ---
 15 MR. SCHWARTZ: I think we are
 16 finished for the time being, but reserve
 17 the right to call you back in light of
 18 any other new discovery that we receive.
 19 Thank you for your time.
 20 ---
 21 (Witness excused.)
 22 (Whereupon, the deposition was
 23 adjourned at 3:06 p.m.)
 24 ---

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1 C E R T I F I C A T E
 2
 3 I do hereby certify that I am a
 4 Notary Public in good standing, that the
 5 aforesaid testimony was taken before me,
 6 pursuant to notice, at the time and place
 7 indicated; that said deponent was by me duly
 8 sworn to tell the truth, the whole truth, and
 9 nothing but the truth; that the testimony of
 10 said deponent was correctly recorded in machine
 11 shorthand by me, to the best of my ability, and
 12 thereafter transcribed under my supervision
 13 with computer-aided transcription; that the
 14 deposition is a true and correct record of the
 15 testimony given by the witness; and that I am
 16 neither of counsel nor kin to any party in said
 17 action, nor interested in the outcome thereof.
 18 WITNESS my hand and official
 19 seal this 3rd day of December, 2018.
 20
 21 *Cheryl L. Goldfarb*
 22
 23 Notary Public
 24

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EXHIBIT “TG 7”

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EXHIBIT “SUMMERS 1”

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EXHIBIT “BAUER 4”
SEE APPENDIX 964-973

EXHIBIT “BAUER 5”
SEE APPENDIX 974-977

EXHIBIT “BAUER 6”

SEE APPENDIX 978-989

EXHIBIT “BAUER 7”
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EXHIBIT “BAUER 8”

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EXHIBIT “BAUER 9”

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EXHIBIT “BAUER 10”

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Veritext Legal Solutions

215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

Appendix 1211

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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